90-1391 (2)

Supreme Court, U.S.
FILED
FEB 27 1991
OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

ROBERT D. HEJL

Petitioner

v

CITY OF AUSTIN, AUSTIN-TRAVIS COUNTY HEALTH DEPARTMENT, and TRAVIS COUNTY, TEXAS

Respondents

APPENDIX TO PETITON FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

COUNSEL TO REPRESENT

IF WRIT GRANTED

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 89-8026

ROBERT D. HEJL,

Plaintiff- Appellant,

Versus

CITY OF AUSTIN,
AUSTIN-TRAVIS COUNTY HEALTH
DEPARTMENT and TRAVIS COUNTY, TEXAS,

Defendants-Appellees.

Appeal from the United States District Court for the
Western District of Texas

ON PETITION FOR REHEARING

(NOVEMBER 29, 1990)

Before POLITZ, DAVIS, and BARKSDALE, Circuit Judges.

PER Curiam:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:

__(Barksdale)_____
United States Circuit Judge

APPENDIX B - 1

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 89-8026
Summary Calendar

ROBERT D. HEJL,

Plaintiff-Appellant,

VERSUS

CITY OF AUSTIN, AUSTIN - TRAVIS COUNTY HEALTH DEPARTMENT AND TRAVIS COUNTY, TEXAS,

Defendants - Appellees.

Appeal from the United States District Court
for the Western District of Texas
(A-88-CA-536)

(October 30, 1990)

Before POLITZ, DAVIS, and BARKSDALE, Circuit Judges.

PER CURIAM: [1]

Robert D. Hejl appeals the Fed. R. Civ. P. 12(b) (6) dismissal of his pro se Civil rights complaint. Because Hejl fails to state a claim upon which relief can be granted, we **AFFIRM**.

---

[1] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

I.

At issue is Hejl's *pro se* third amended complaint, filed in February 1989, after the district court dismissed his second amended complaint, but allowed him to amend. Hejl alleged in his third amended complaint that the City of Austin, Texas, the Austin-Travis County Health Department, and Travis County, Texas, violated his constitutional rights and asserted claims under 42 U.S.C. §§ 1983,1985, 2000a, 2000a-1, and 2000a-2.

This action was filed July 6, 1988. On or about that same day, Hejl filed an action, sounding in similar contentions and concerning operation of the same produce market at issue here, against, *inter alia*, Highland Mall, and Rouse Company and Travis County, one of the defendants here. [2] That parallel action is the subject of this court's opinion in *Hejl v. Texas State Dep't of Agric.*, No. 88-1724 (5th Cir. July 24, 1989) (unpublished) (attached).

In the parallel action, Hejl alleged that with participation by Travis County, a portion of the grounds at Highland Mall had been used for a farmers market for the sale of locally grown produce; and that in March 1986, participants at the market were advised that preference would be given member of the Central Texas Growers Association (CTGA) in both leasing price and location at the market. Hejl alleged that he was prevented by his religious beliefs from being a member

---

[2] The Texas State Department of Agriculture and the Travis County Extension Agricultural Agent Office were also sued,

of CTGA, because those beliefs prohibit him from joining any organization in order to engage in commerce. Those beliefs are described fully in Hejl's third amended complaint in this action. [3]

---

[3] Hejl alleges:

Plaintiff is an "Old" Moravian Taborite. The National original of Taborites is from Moravia, now a province or state of Czechoslovakia. The history of Taborites is one of exceptional persecution, almost to their extinction in the thirteenth century, by the Teutons and the Roman Catholic Church, which viciously fought their advocacy of Protestantism prior to Martin Luther. "Old" Moravian Taborites advocate the "Brotherhood of Man", and among their creed and belief is the right to enjoy their trade and commerce without any classification or necessity of joining trade, guild, or union association.

Plaintiff was expressing his religious belief and creed when he refused to join an "Association" to which he had neither need or desire to join., This right of expression is protected by the Constitutional Amendment 1 freedom of religion clause. It would be no problem showing that "Old" Moravian Taborites are a vanishing p\species, with their evolution into Unitas Fratum, United Brethren, Moravian Brethren, and the Anglicized Quakers. It is doubtful if any Calixtines or Hussites remain today and "Old" Moravian doctrine of absolute honesty and integrity among men dooms

most to other means of religious expression. (Emphasis by Hejl.)

Hejl alleged further in the parallel action that he paid a stall rental fee at the higher rate for non-CTGA members, but was told that his failure to join CTGA would result in his being moved from his separate stall into a tent with other sellers; that he was moved to that tent; and that as a result of his objections, he was advised that he would no longer be allowed to sell produce at the market, because he was in violation of state sanitation rules.

In the parallel action, Hejl asserted claims under the same statutes as are relied upon in this action -- 42 U.S.C. §§ 1983, 1985, 2000a, 2000a-1, and 2000a-2. The parallel action was dismissed under Rule 12 (b) (6), as was this action. This court's opinion in the parallel action is directly applicable to all but one of Hejl's claims in this action, as discussed below.

Here, Hejl alleged that CTGA members were given immunity from enforcement of the state rules described above, but that they were selectively enforced against him, both because he was not a CTGA member and because he had complained about the rules and their enforcement to the Texas Attorney General. He alleged that this caused defendants and unnamed other to conspire, *inter alia*, to remove him from the market. Hejl also alleged that he sought a waiver of the application of the rules concerning the need for a certified public water supply, and that his presentation at the hearing on this waiver request simply further caused defendants to make their unlawful demands against him.

By letter dated July 10, 1986, Hejl was denied the right to

continue selling produce at the market; and he alleged that on requesting a hearing, he was told to sue instead. He alleged further that his commissary was in full compliance with state law and had no health hazards; that he was the only vendor the rules were enforced against; and that his "closure was not rationally related health, safety, welfare, or the environment" and was instead a "discriminatory, retaliatory, invidious class-based animus, done with intent to intimidate, harm, injure, and punish" him.

After Hejl's third amended complaint was filed, the district court dismissed the City of Austin and Austin- Travis County Health Department, pursuant to Rule 12 (b) (6). In a subsequent order, the court granted Travis County's second motion to dismiss and dismissed the complaint, again pursuant to Rule 12 (b) (6). Hejl filed a timely notice of appeal.

II

We will affirm a dismissal under Fed. R. Civ. P. 12 (b)(6) only if "'it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *McCormack v. National Collegiate Athletic Ass'n*, 845 F. 2d 1338, 1343 (5th Cir. 1988) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46) (1957)). In reviewing a 12(b) (6) dismissal, the allegations of the complaint are taken as true; however, this court will not assume facts not alleged, *McCormack*, 845 F. 2d at 1343, nor will it consider wholly conclusory allegations. *Manax v. McNamara*, 842 F. 2d 808, 812 (5th Cir. 1988).

A.

Hejl claims, *inter alia*, that the defendants' selective enforcement actions deprived him of the right to engage in commerce. [4] The only claim raised in this appeal that is not addressed by this court's opinion in the parallel litigation is that the defendants selectively enforced state rules against him in violation of his right to equal protection. As for his other claims in this action, they were dismissed properly under Rule 12 (b) (6). *See Hejl* (attached).

B.

To sustain his claim of selective enforcement, Hejl must show that the enforcement was "' deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification.'" *Wayte v. United States*, 470 U.S. 598,608 (1985) (citations omitted). Such "claims are judged according to ordinary equal protection standards" and plaintiff must "show both that the . . . enforcement system had a discriminatory effect and that it was motivated by discriminatory purpose." ***Id.*** at 608-09.

---

[4] Hejl alleged, *inter alia*, denial of right to engage in commerce; denial of freedom of expression of religious belief, conspiracy and retaliation resulting from freedom of speech and expression, and from petition for redress of grievance; selective enforcement; denial of due process and denial of procedural and substantive rights to a hearing; and conspiracy to interfere with civil rights.

Hejl alleges that the defendants maliciously and

selectively enforced the state rules against him because he was not a CTGA member. He does not allege that other non-members faced similar discrimination. Rather, he asserts that the defendants singled him out, including because he complained about the state rules. Under an equal protection claim, however, it is not sufficient to allege merely that one was treated unfairly. *See, e.g., Jureczki v. City of Seabrook, Texas*, 760 F. 2d 666, 670 (5th Cir. 1985), *cert. denied*, 475 U.S. 1045 (1986). Even under the liberal standards for review of *pro se* complaints, Hejl's conclusory claims fall far short of alleging sufficiently that the alleged selective enforcement was based upon an unjustifiable standard. Instead, for example, he alleges that he sought a waiver of the rule being enforced against him, indicating that, at the very least, there was a justifiable basis for claiming Hejl was in violation. In short, he fails to state a claim upon which relief can be granted.

III.

Accordingly, we

AFFIRM

B - 8

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 89-8026

Summary Calender

D.C. Docket No. A-88-CA-536

ROBERT D. HEJL,

Plaintiff-Appellant,

Versus

CITY OF AUSTIN,
AUSTIN-TRAVIS COUNTY HEALTH
DEPARTMENT and TRAVIS COUNTY, TEXAS,

Defendants-Appellees.

Appeal from the United States District Court for the
Western District of Texas

Before POLITZ, DAVIS and BARKSDALE, Circuit Judges.

J U D G M E N T

This cause came on to be heard on the record on appeal and was taken under submission on the briefs on file.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the District Court in this cause is affirmed.

IT IS FURTHER ORDERED that plaintiff-appellant pay to the defendants-appellees the costs on appeal to be taxed by the Clerk of the Court.

October 30, 1990

ISSUED AS MANDATE:

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 88-1724

ROBERT D. HEJL,

Plaintiff-Appellant,

versus

TEXAS STATE DEPARTMENT OF AGRICULTURE, ET AL.,

Defendants,

* * * * * *

ROBERT D. HEJL,

Plaintiff-Appellant,

versus

TRAVIS COUNTY,TEXAS, HIGHLAND MALL and THE ROUSE COMPANY,

Defendants-Appellees.

Appeal from the United States District Court for the
Western District of Texas
(A-88-CA-531)

(July 24, 1989)

Before GEE, WILLIAMS, and HIGGINBOTHAM, Circuit Judges.

PER CURIAM: [1]

---

[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Robert D. Hejl appeals the district court's dismissal of his pro se civil rights suit against Highland Mall, the Rouse Company, and Travis County, Texas. Finding that Hejl's allegations fail to state a claim upon which relief can be granted, we affirm.

I

On July 5, 1988, Hejl brought suit against the Texas State Department of Agriculture (TDA), the Travis County Extension Agricultural Agent Office, Travis County, Highland Mall and the Rouse Company, asserting claims under U.S.C. §§ 1983, 1985(3), 2000a, 2000a-1, and 2000a-2. In his amended complaint, Hejl alleged that in 1986 the Travis County commissioners had entered into an agreement with Highland Mall, a division of the Rouse Company, to lease a portion of the mall grounds in order to hold a farmers' market to promote the sale of locally-grown produce. In March 1986, a meeting was held to explain the rules and operating procedures of the market. Under the rules, growers who were members of the Central Texas Growers Association, a farmers' cooperative, were given preference in both the leasing process of stalls and in location at the market. Hejl was not a member of the association and did not wish to join because of his religious beliefs. Hejl is a Moravian Taborite whose beliefs forbid him form joining or paying dues to any association.

Hejl alleged that for the first eight market Saturdays he paid the $20 stall rental fee required of farmers who were not association members and that he was repeatedly told by "an agent of the [d]efendants" that unless he joined the association he would be removed from his stall and placed in

the dealers' tent. He also alleges that when he was placed in the dealers' tent for a second time on July 5, 1986, he objected strenuously and in response received a letter informing him that he would not be allowed to sell at the market because his operation violated the state rules for food service sanitation.

The TDA and the Texas Agricultural Extension Service[2] moved to dismiss on grounds that they were immune from suit under the Eleventh Amendment. Hejl then moved to dismiss the TDA and the "Travis County Agricultural Agent Office." The district court granted the motion.

Highland and Rouse then moved to dismiss on grounds that the suit was barred by the statute of limitations and the Hejl had failed to state a claim upon which relief could be granted. Travis County files an answer, but did not assert the statute of limitations as an affirmative defense. The district court dismissed the suit against Highland, Rouse and Travis County on the alternative bases of the statute of limitations and failure to state a claim upon which relief could be granted.

II

On appeal, Hejl contends that the district court erred by dismissing his suit against Highland, Rouse and Travis County. We disagree.

---

[2] The state asserted that is was the true defendant because the Travis County Agricultural Extension Service is a branch of the Texas Agricultural Extension Service.

A. Statute of Limitations

Civil rights actions brought under Sections 1983 and 1985 are deemed analogous to Texas tort actions, and the applicable limitations period is the two-year period found in Tex. Civ. P. & Rem. Code Ann. § 16.003. Helton v. Clements, 832 F.2d 332, 334 (5th Cir. 1987). See Owens v. Okure, __ U.S. ___, 109 S. Ct. 573, 102 L.Ed.2d 594 (1989). While the statute of limitations for these civil rights actions is borrowed from state law, the date the action accrues is determined by federal law. A cause of action accrues when the plaintiff knows or has reason to know of the injury that is the basis of his complaint; i.e., "the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured." Helton, 832 F. 2d at 334-35.

Hejl filed suit on July 5, 1988. Defendants argue that Hejl's suit is time-barred because his cause of action accrued on March 4, 1986, when he became aware that vendors who did not belong to the association would be charged more for stalls at the farmers' market. Hejl contends that his injuries occurred on July 5, 1986, when he was excluded from the stall he had been leasing and on July 9, when his operation was shut down. As we will explain, we otherwise conclude that no claim was stated for any time period. And, we do not decide whether Hejl's claims are time-barred.

B. Failure To State A Claim

A Rule 12 (b) (6) dismissal will be affirmed only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" McCormack v. National Collegiate Athletic Association, 845

F.2d 1338, 1343 (5th Cir. 1988) (quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L.Ed.2d 80 (1957)). In reviewing a Rule 12 (b) (6) dismissal, the allegations of the complaint are taken as true; however, we do not assume facts not alleged, Id., nor do we consider wholly conclusory allegations. Manax v. McNamara, 842 F.2d 808, 812 (5th Cir. 1988).

1. Section 1983 Claim

To state a claim under § 1983, a plaintiff must allege that he has been deprived of a right secured by the constitution or federal law and that the deprivation occurred under color of state law. Bradt v. Smith, 634 F.2d 796, 799 (5th Cir. Unit A), cert. denied, 454 U.S. 830 (1981). In order to state a claim against a private party under § 1983, the challenged conduct of the private party must be fairly attributable to the state. Barnes v. Lehman, 861 F.2d 1383, 1385-86 (5th Cir. 1988). The allegation that the mall was a state actor was nothing more than an allegation that because the mall held a contract from a state actor it was a state actor as well. This is not sufficient.

Moreover, Hejl cannot otherwise demonstrate that he has been deprived of a federal right. He had no constitutionally secured right to sell his wares at the farmers' market and the rules of the market created none. Nor is his alleged treatment (essentially twenty dollars rather ten dollars for stall rent) a denial of his religious freedom. Of course, the placement of nonmembers, such as Hejl, in the dealers' tent on July 5 may have inadvertently imposed some cost on Hejl's religious beliefs, but nothing suggests that any such cost was not

"limited in scope and insignificant in magnitude." Niles v. University Interscholastic League, 715 F.2d 1027, 1030 (5th Cir. 1983), cert. denied, 465 U.S. 1028 (1984) (quoting Walsh v. Louisiana High School Athletic Assn., 616 F.2d 152, 158 (5th Cir. 1980), cert. denied, 449 U.S. 1124 (1981)). We therefore affirm the district court's dismissal of this claim.

2. Section 1985 Claim

Section 1985 requires that the plaintiff show that a conspiracy to deprive him of his constitutional rights was motivated by a class-based discriminatory animus. Griffin v. Breckenridge, 403 U.S. 88, 102 S. Ct. 1790, 29 L.Ed.2d 338 (1971). Insofar as Hejl asserts the conspiracy was economically motivated he has failed to state a claim. Section 1985 (3) will not support a claim for conspiracies motivated by economic views or activities. Daigle v. Gulf State Utilities Co., Local No. 2886, 794 F.2d 974, 978-79 (5th Cir.), cert. denied, 479 U.S. 1008 (1986). Nor is any allegation of conspiracy rooted in some animus directed toward his religion sufficiently stated. General conclusions are not sufficient particularly when, as here, questions of immunity abound. Cf. Rodriquez v. Avita, 871 F.2d 552,554 (5th Cir. 1989) (§ 1983 complaint must state specific facts). Hejl alleged only that any development and enforcement of the market rules must have required "consultations" among the defendants. Hejl has therefore failed to state a claim under § 1985.

3. Section 2000a Claims

Hejl also fails to state a claim under the public accommodation laws. Section 2000a (a) provides that:

> All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the grounds of race, color, religion, or national origin.

42 U.S.C. § 2000a (a) (emphasis added). Subsection (b) defines the covered public accommodations. None of these definitions of public accommodations include the farmers' market. The only arguably analogous category is 2000a (b) (2), which prohibits discrimination by an enterprise whose primary business is food sold for consumption on the premises. This was not the business of this farmer's market.

Section 2000a-1 forbids discrimination on religious grounds if such discrimination is or purports to be required by state law, regulation or rule. Hejl, except in the most conclusory manner, has not alleged that Highland took any action against him based on his religion. He did not state a claim under this section.

Section 2000a-2 prohibits attempts to withhold the rights guaranteed under Sections 2000a or 2000a-1 and forbids attempts to intimidate or punish persons exercising their rights under those sections. Given our conclusion that defendants did not violate Hejl's rights under Sections 2000a and 2000a-1, he has no claim under Section 2000a-2.

We affirm the district court's dismissal of Hejl's suit against Highland, Rouse and Travis County, Texas.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ROBERT D. HEJL {
Plaintiff, {
{
v. { CIVIL ACTION NO. A-88-CA-536
{
CITY OF AUSTIN, AUSTIN-TRAVIS
COUNTY HEALTH DEPARTMENT,
TRAVIS COUNTY, TEXAS,
Defendants. {

ORDER

On this day the Court considers the motion of Defendants City of Austin and Austin-Travis County Health Department to dismiss pursuant to Federal Rule of Civil Procedure 12 (b) (6). Upon careful consideration, the Court is of the opinion that such motion is meritorious and should be granted.

A motion to dismiss under Rule 12 (b) (6) "is viewed with disfavor and is rarely granted." Kaiser Aluminum and Chemical Sales, Inc. v. Avondale Shipyards, Inc., 677 F.2d 1045, 1050 (5th Cir. 1982) quoting 5 C. Wright and A. Miller, Federal Practice and Procedure Section 1357 at 598 (1969). It is well settled that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S.

41, 45-46 (1957); Boudelock v. Grow Chemical Coating Corp., 728 F.2d 759, 762 (5th Cir. 1984); Kaiser, 677 F.2d at 1050. When considering such a motion, the complaint must be liberally construed in the plaintiff's favor, and all facts pleaded in the complaint should be accepted as true. Campbell v. Wells Fargo Bank, N.A., 781 F.2d 440, 442 (5th Cir. 1986).

Plaintiff alleges a denial of the right to engage in commerce, selective enforcement, denial of due process, denial of equal protection, religious discrimination and conspiracy. These allegations arise from a regulatory decision by the Austin-Travis County Health Department to close plaintiff's operations at the Highland Mall in Austin, Texas.

Even with the leniency afforded pro se parties, the Court finds that the Plaintiff's complaint fails to make out a legally cognizable claim and must be dismissed.

The law on municipal liability pursuant to 42 U.S.C. Sections 1981, 1983 and/or 1985 is well settled and long-standing. A municipality cannot be held liable under respondeat superior for the actions of its officials unless those actions are in execution of City policy.

Official policy is defined as:

1. A policy statement, ordinance, regulation, or decision that is officially adopted and promulgated by the municipality's lawmaking officers or by an official to whom the lawmakers have delegated policy-making authority; or

2. A persistent, widespread practice of city officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well settled as to constitute a custom that fairly represents municipal policy. Actual or constructive knowledge of such custom must be attributable to the governing body of the municipality or to an official to whom that body had delegated policy-making authority.

City of St. Louis v. Praprotnik, __U.S. ___, 108 S. Ct. 915 (1988); Bennett v. City of Slidell, 735 F.2d 861, 862 (5th Cir. 1984) en banc.

Only those municipal officers who have final policy-making authority may, by their actions, subject a municipality to liability under 42 U.S.C. Sections 1981, 1983 and/or 1985. The question of which municipal officers have final policy-making authority is one of state law, and in this case, the City Council of the City of Austin has the final policy-making authority regrading any policies in the City of Austin or the Austin-Travis County Health Department; likewise the County Commissioners' Court is policy-maker for Travis County. Praprotnik, ___U.S. ____, 108 S. Ct. 915 (1988); Jett v. Dallas Independent School District, 837 F.2d 1244 (5th Cir. 1988); Bennett, 735 F.2d 861 (5th Cir. 1984) en banc.

In this case, the Court finds Plaintiff has failed to state a cause of action against the City of Austin or the Austin-Travis County Health Department, or Travis County. Plaintiff has failed to show a single fact to support his allegation that the

City of Austin has either a policy of discrimination based on his religion of Old Movarian Taborite, a policy of discrimination based on the exercise of Plaintiff's First Amendment rights, or a policy of conspiring to discriminate in either of these manners. Only the actions of the City Council can subject the City of Austin to liability since the City Charter, as a matter of state law, makes the City Council the final decision maker as to policy or practice for the City of Austin. The Court finds that Plaintiff has failed to show any action on the part of the City Council of the City of Austin, or even to allege any wrongdoing on their part.

To sustain Plaintiff's 42 U.S.C. Section 1985 (3) claim, he must prove;

1. that all the defendants conspired;

2. for the purpose of depriving either directly or indirectly, any person or class of persons of the equal protections of the laws, or of equal privileges and immunities under the laws; and

3. that the defendants acted in furtherance of the object of conspiracy, whereby one was (a) injured in his person or property, or (b) deprived of having and exercising any right of privilege of a citizen of the United States.

42 U.S.C. Section 1985 (3).

To demonstrate a violation of the equal protection of laws section, it must be demonstrated that the Plaintiff has been subjected to racial or other class-based invidious

discrimination by the conspirator's action and the actions of the Defendants' conspiracy must demonstrate a violation of some law independent of 42 U.S.C. Section 1985 (3). W.W. Taylor v. Federal Home Loan Bank Board, 661 F. Supp. 1333 (N.D. Tex. 1986); Vietnamese Fisherman's Association, et al. v. the Knights of the Ku Klux Klan, et al., 518 F. Supp. 993 (S. D. Tex. 1981).

In his amended complaint, Plaintiff alleges that the Defendants conspired to discriminate against him because he claimed that health and sanitation rules enforced against him by the Austin-Travis County Health Department were unconstitutional and discriminatory, applied arbitrarily and capriciously, and because he was a Movarian Taborite.

The Court is of the opinion that Plaintiff has neither shown that Defendants, in any way, conspired together, nor described any action taken to further said conspiracy, nor shown that he is a member of a class of persons which is being afforded protection under Section 1985.

Section 1985 requires a plaintiff to show that a conspiracy was not only aimed at depriving him equal protection under the laws, but also that underlying the conspirators' actions must be "some racial or perhaps class-based, individiously discriminating animus." Griffin v. Breckenridge, 403 U.S. 88, 102, 91 S. Ct. 1970 (1971). Plaintiff fails to show any violation of his equal protection rights because he does not show any authority that Movarian Taborites are a class protected under the statutes, not does he assert that the alleged conspiracy is racially based. By Plaintiff's own admission, Movarian Taborites are extinct.

Clearly, Plaintiff is not representative of a group, nor has has he shown that any group of which he may claim membership is disabled and politically powerless as to invoke the equal protection clause. Rather, Plaintiff's complaints center solely on his individual problems with the Defendants.

All Defendants have claimed qualified immunity. The law is clear that public officials and employees performing discretionary functions are entitled to qualified immunity insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known. Plaintiff's First Amendment rights and equal protection rights may be clearly established, but in order to prove his case, Plaintiff must show that the Defendants knew that what they were doing violated those rights. Anderson v. Creighton, ____ U.S. ____, 107 S. Ct. 3034 (1987); Noyola v. Texas Department of Human Resources, 846 F.2d 1021 (5th Cir. 1988). The Court finds Plaintiff has failed to establish an intent on the part of Defendants to conspire or an individual intent to deprive Plaintiff of his civil rights.

Plaintiff further alleges that the rules and regulations enforced by Defendants are unconstitutional and discriminatory, and were selectively enforced against Plaintiff which denied him his right to engage in commerce in violation of Plaintiff's due process and equal protection of the laws.

The due process provisions do not create property or liberty interest. Those provisions provide procedural safeguards against arbitrary deprivation. First, the Plaintiff

must prove that he had a liberty or property interest that required due process protection." West Chicago, Illinois v. U. S. Nuclear Regulatory Commission, 701 F.2d 632, 645 (7th Cir. 1983). This Court finds Plaintiff's right to engage in selling his food products at Highland Mall is not considered a property interest, since the Plaintiff's interest is not based on a legitimate claim under state law. Board of Regents of State College v. Roth. 408 U.S. 564, 91 S. Ct 2701 (1972).

Assuming arguendo, that Plaintiff has a legitimate interest requiring some fair process or procedure, the Court then must next determine whether a prior evidentiary hearing is required, and the extent of the procedural requirements. Due process requires that the interested party be given a reasonable opportunity to know the claims of adverse parties, and an opportunity to meet them. North Alabama Express Line v. U.S., 385 F.2d 783,786 (5th Cir. 1978).

Plaintiff has failed to allege that he did not receive notice of or was denied a hearing. Plaintiff alleges, instead, that he was "told to sue," and not informed about his right to appeal.

Finally, the Court focuses on Plaintiff's allegations that the rules of the Austin-Travis County Health Department and City of Austin were selectively enforced against Plaintiff because he was not a member of an "Association." Plaintiff alleges that Defendants treated Plaintiff dissimilarly to the persons or vendors who were members of the "Association." This Court's inquiry focuses on whether the rules rationally relate to any possible legitimate end of the government. The Court finds the purpose of Defendant's rules is to protect the health, safety and welfare of the public by regulating vendors who

sell their products and to ensure that their commissaries meet minimal city, county and state health laws for the protection of the public.

Even if Defendants unevenly or erroneously applied the rules or regulations against Plaintiff, he has not shown that the rules or regulations were applied and enforced intentionally or purposely against Plaintiff in order to discriminate against him. Therefore,

IT IS ORDERED that the Defendants City of Austin and Austin-Travis County Health Department's Motion to Dismiss by and hereby is GRANTED.

IT IS FURTHER ORDERED that Defendants City of Austin and Austin-Travis County Health Department be and are DISMISSED.

IT IS FURTHER ORDERED that any pending motions be and are DENIED as moot.

SIGNED this _(14th)__ day of June, 1989.

_____(Walter S. Smith Jr.)_____
WALTER S. SMITH, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES CONSTITUTION

UNITED STATES CONSTITUTION ARTICLE 1 Section 8 Clause 3

Congress shall have the power...3: To regulate commerce with foreign nations and among the several states, and with the Indian tribes.

USCS Constitutional Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

USCA Constitutional Amendment XIV

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

42 USCS § 1983 Civil Action of deprivation of rights.

"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or caused to be subjected, any citizen if the United States or other person within the

jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, an Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. (R.S. § 1979; Dec. 29, 1979. P.L. 96-170, § 1, 93 Stat. 1284.)

42 USCS 1985 (3) Conspiracy to interfere with civil rights Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises or another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or in injure any citizen in person pr property on account of such support or advocacy; in any case of conspiracy set forth in this section, of one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy,

whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United State, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. (R.S. § 1980.)

STATUTES

42 USCS § 2000a (a) (b) (c) (d)

PUBLIC ACCOMMODATIONS (SEC. 201)

§2000a. **Right to full and equal enjoyment of places of public accommodation**

(a) **Equal access**. All persons shall be entitled to the full and equal enjoyment of goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or nations origin.

(b) **Place of public accommodation**. Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title (42 USCS §§ 2000a-2000a-6) if its operations affect commerce, or is discrimination or segregation by it is supported by State action:

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) an establishment (A) (i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is

physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

(c) **Operations affecting commerce; definition of "commerce".** The operations of an establishment affect commerce within the meaning of this title (42 USCS §§ 2000a-2000a-6) if (1) it is one of the establishment described in paragraph (1) of subsection (b); (2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, had moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b), it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move on commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b), it is physically located with the premises of, or there is physically located within its premises, an establishment the operation of which affect commerce within the meaning of this subsection. For the purposes of this section, "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between any foreign country or any territory or possession and any State or District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

(d) **Discrimination or segregation supported by State action.** Discrimination or segregation by an establishment is

supported by State action within the meaning of this title (42 USCS §§ 2000a -2000a-6) if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof.

42 USCS § 2000a-1 Entitlement (Sec. 202)

All persons shall be entitled to be free, at any establishment or place from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof. (July 2, 1964, P.L. 88-352, Title II, § 202, 78 Stat. 244.)

42 USCS § 2000a-2 Interference (a) (b) (c)

No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right of privilege secured by section 201 or 202 [42 USCS §§ 2000a, 2000a-1], or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 201 or 202 [42 §§ 2000a, 2000a-1], or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202 [42 USCS §§ 2000a, 2000a-1]. (July 2, 1964, P.L. 88-352, Title 11 § 203, 78 Stat. 244.)

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PROPOSED BY-LAWS OF CENTRAL TEXAS GROWERS ASSOCIATION

1. NAME AND ADDRESS: The name of the Association is the Central Texas Growers Association. The address of the Association is 1600 B Smith Road. Phone number: 473-9600. (NOTE: same as TAES)

2. PURPOSES:

3. MEMBERSHIP: Any Texas farmer or rancher who wishes to directly market their products with the asst. of the Assoc. may become a member. All members must pay annual dues of $20.00 from March 1 to Feb. 28 of the next year or as set by a majority vote of the Board of Directors. All applications for membership will be reviewed by the Board of Directors and approved before the applications are accepted. Members will receive a membership card as evidence of their membership in the Assoc. Participation by non-producers in the Association's activities shall be according to rules established by the Board of Directors and may support the market as non-voting members for at least $15.00 per year.

4. COMPLIANCE WITH RULES: All members of the Association agree to abide by these By-Laws, all rules governing conduct at the Farmers Markets, and any other regulations duly passed by the Board of Directors.

5. AGENTS OF MEMBERS: 6. TERMINATION OF MEMBERSHIP: 7. BOARD OF DIRECTORS: 8. POWERS OF THE BOARD: 9. ELECTION OF THE BOARD: 10. BOARD MEETINGS: 11. COMPENSATION: 12. REMOVAL OF DIRECTORS: 13. DUTIES OF OFFICERS: 14. MEETINGS OF MEMBERS: 15. DISSOLUTION OF THE ASSOCIATION:

16. CHANGES TO THE BY-LAWS:

TEXAS DEPARTMENT TRAVIS COUNTY FARMERS MARKET (LOGO) OF AGRICULTURE AT HIGHLAND MALL

RULES AND REGULATIONS 1986 TRAVIS COUNTY FARMERS MARKET

MEMBERSHIP RULE: to receive first priority for space and qualify for $10.00 stall fee, the Texas Farmer, Grower or Producer must be a member of the Central Texas Growers Association.

PRODUCTS TO BE SOLD: Agricultural produce such as vegetables, fruit, honey, eggs, and plants grown in the State of Texas. Meats, Poultry, and Fish, must be Texas produced; seller shall be responsible for meeting State and/or County health regulations. Other products may be sold only with advance permission of Market Manager (45409656) and must meet all applicable State and/or County health regulations.

QUALITY CONTROL: HOURS AND DAYS OF OPERATION:

STALL RESERVATIONS:

STALL FEES: $10.00 for members of the Central Texas Growers Association selling as farmers or farmer merchants. $20.00 for non-members.

USE OF THE MARKET: Members of the Central Texas Growers Association receive priority over non-members. Wholesale distributors will be allowed to reserve space in the Market if space permits, but must meet all applicable quality criteria stated by the Growers Association and the Market

Manager.

SANITARY CONDITION OF SALES AREA:, SALES: ,
EQUIPMENT: , SIGNS: , CHALK BOARDS: , ELECTRICITY: ,
INSPECTION OF WEIGHING AND MEASURING DEVICES: ,
PARKING-SELLERS:

Dee Desjardin
Travis County Farmer's Market Manager
454-9656

A Program of
Travis County

A PROGRAM OF TRAVIS COUNTY EXTENSION SERVICE

F3a

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made the 7th day of May, 1985, by and between THE HIGHLAND MALL JOINT VENTURE, by AUSTIN MALL, INC., and Maryland Corporation (hereinafter called "Owner") and TRAVIS COUNTY (hereinafter called "Licensee")

WITNESSETH:

WHEREAS, Owner is the owner of the parcel of ground outlined in Schedule "A" attached hereto and made a part hereof (hereinafter called the "License Area"); and WHEREAS, Licensee is desirous of obtaining from Owner the right, privilege and license to use the License Area for the purpose hereinafter set forth, and Owner is willing to grant to Licensee such right, privilege and license subject to the following covenants, obligations, terms and conditions; NOW, THEREFORE, in consideration of the sum of One Dollar ($1.00) in hand paid by Licensee to the Owner, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged. Owner hereby grants to Licensee the right, privilege and license to use the License Area,; subject, however, to the following independent covenants, conditions, terms and obligations:

1. License covenants and agrees that it will use the License Area solely for the purpose of conducting thereon the Farmers' Market (the "Market"), said Market to take place commencing May 18, 1985, and terminating October 5, 1985 ({"Term"), on Saturday of each week during the Term between the hours of 8:00 a.m. and 5:00 p.m., which hours are subject

to change by agreement between Owner and Licensee.

2. Licensee agrees that Owner may collect a vendor's rental fee of Ten Dollars ($10.00) per day for each stall rented by a Texas farmer/producer ("Rental/Farmer's Fee") and Twenty Dollars ($20.00) per day for each stall rented by a Producer/Distributor ("Rental/Distributor fee").

3., 4.

5. Licensee agrees to provide the following, namely: (a). Market consultant to work in conjunction with Owner and Manager. (b). Printings facilities for the production of brochures and other printed materials providing publicity and advertising which printed materials shall be subject to Owner's prior approval. (c). Develop program with extension agencies to seminars to be conducted at the Market. (d). Work with Manager to recruit vendors for the Market. (e). Provide display tables for the Market.

6. Owner agrees to provide: (a). Maintenance service for the Market. (b). Limited electrical and water service to the Market. (c). Four (4) 60'x60' tents, including maintenance, repair, setting-up, taking down and storage of the such tents to be used in the Market. (d). Two (2) portable restrooms including service, signage and screen for same, the locations for which are to be determined by Owner. (e). Area for extension service to hold seminars.

7. (f). Farmers must receive first priority as vendors. (g). Broker of Texas produce will be allowed as vendors in the Market, if space permits, but must meet quality. (j). Meat and poultry must be Texas produced, and vendor shall be

responsible for meeting state and/or country health regulations.

8.

9. Licensee hereby appoints Austin Mall, Inc. as Manager of the Market ("Manager") and agrees to pay Owner a fee ("fee") equal to the sum of EIGHT THOUSAND AND NO/100 ($8,000.00) DOLLARS in advance of commencement of the Term, to be used to pay for management of the Market.

In consideration of the Fee, Manager agrees to perform the following, namely:

a. Supervise and merchandise the Market.

b. Recruit vendors for the Market.

c. Provide traffic control of the exterior of the Market, to include pedestrian traffic control, barricading and supervision of designated roads.

d. Generate advertising and publicity for the Market in conjunction with that which is provided by Licensee.

10. In addition, Licensee agrees to pay Owner the sum of TEN THOUSAND and NO/100 ($10,000.00) DOLLARS in advance of the commencement of the Term, which money Owner agrees to apply to the payment for the tents furnished to License under this Agreement. Upon request of licensee, Owner will provide copies of canceled checks or other proof that such payment has been made.

11.

12. This License Agreement represents the full and complete understanding of the parties hereto, and no representations, warranties, or agreements have been made

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or relied upon other than as set forth herein by the parties hereto. No amendments or modifications to this Agreement, shall be effective unless set forth in a document executed by Licensee and owner, No agent, employee, or official of Travis County may change this agreement or waive it in whole or in part, except in accordance with such express authority as may be granted by the Travis county Commissioners Court.

13. All notices required or permitted under this License Agreement shall be mailed Certified or Registered Mail, postage paid, to the following address:

If to Owner:

C/O General Counsel
The Rouse Company
10275 Little Patuxent Prkwy.
Columbia, MD 21044

cc:

The Highland Mall Mgmt. Office
1230 Highland Mall
6001 Airport Blvd.
Austin, Texas 78752

If to Licensee:

Travis County Judge
P.O.Box 1748
Austin, Texas 78767

Travis County Attorney
P.O. Box 1748
Austin, Texas 78767
Attn: File No. 84-21.1

Notices shall be deemed to be delivered seventy-two (72) hours after mailing.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement as of the day and year first above written.

ATTEST:

THE HIGHLAND MALL JOINT VENTURE, Owner

By: Austin Mall, Inc.

____(I. Ban) ?_____
Assistant Secretary

By: __(Janet G. Reed) __(Seal)
Vice President

TRAVIS COUNTY, TEXAS, Licensee

By: __(Mike Renfro) _____
County Judge

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AFFIDAVIT

Before me, the undersigned Notary Public in and for service in Travis County, Texas on this day personally appeared, Robert D. Hejl, of Manchaca, Texas, located in Travis County, Texas, and being personally known to me as the named person, after being duly sworn, does state as follows:

That on or about the 3rd day of November, 1988, an inquiry was made to the office of the Clerk of Travis County, Texas to obtain a copy of a contract which allegedly issued between Highland Mall and the Travis County Commissioners in 1986 regarding the use of Highland Mall property for the 1986 Travis County Farmer's Market at Highland Mall

Affiant was told that the 1985 contract had been located, but that he should call back on November 7th in order to give time to locate the 1986 contract.

On or about Nov. 9, affiant requested counsel for Defendant Travis County (through his secretary) to furnish the 1986 contract copy, as a courtesy to Plaintiff.

As of Nov. 16, 1988, clerk advised that copy could not be located. On Nov. 17, affiant received copy of 1985 contract and pertinent page 2 of 1987 contract.

On November 18, 1988, Plaintiff-affiant called the former County Judge Mike Renfro in an effort to obtain information regarding the date of issue. He stated that it was probably in May, 1986, and that a duplicate copy should be in the County Attorney's office.

On November 18, 1988 affiant contacted County Attorney's office and requested that a copy be made available to affiant.

Affiant also requested a copy of this 1986 contract from counsel for Defendant-Appellee Highland Mall and the Rouse Company.

On Nov. 21, 1988, the records clerk informed affiant that a diligent search of County records form January, 1986 to August, 1986 did not reveal that said contract was within the County of Travis records, or had been entered in the index. This statement was again affirmed by clerk November 23, 1988.

As of 28, November, 1988, no copy of the 1986 contract is available to affiant-Appellant, although it is known to exist, and is not recorded in 1986 records of Travis County clerks files.

The foregoing statements are alleged to be true and correct to the best of my knowledge and investigations.

____(Robert D. Hejl)__1/187
ROBERT D. HEJL
Box 541
Manchaca, Texas 78652-0541

The State of Texas
County of Travis

(Acknowledgement by Notary) 28th day of Nov, A.D. 1988

LICENSE AGREEMENT (1987)

2. Licensee agrees that Owner may collect a vendor's rental fee of Ten Dollars ($10.00) per day for each stall rented by a member of the Central Texas Growers Association or any owner representative of a farm located within Travis County ("Rental/Member fee") and Twenty Dollars ($20.00) per day for each stall rented by a nonmember Farmer/Distributor ("Rental/Nonmember fee").

Art. 5207a. Right to bargain freely not be denied; membership in labor union. Acts 1947, 50th Leg., p.107, ch. 74.

ARTICLE 5. DISCRIMINATION IN EMPLOYMENT

Labor organizations

Sec. 5.03. It is an unlawful employment practice for a labor organization:

(1) to exclude or to expel from membership or otherwise to discriminate against an individual because of race, color, handicap, religion, sex, national origin, or age;

(2) to limit, segregate, or classify members or applicants for membership or to classify or to fail or refuse to refer for employment an individual because of race, color, handicap, religion, sex, national origin, or age in a way:

(A) that would deprive or tend to deprive an individual of employment opportunities; or

(B) that would limit employment opportunities or otherwise adversely affect the status of an employee or of an applicant for employment; or

(3) that would cause or attempt to cause an employer to violate this article.

Other discriminatory employment practices

Sec. 5.05. (a) It is an unlawful employment practice for an employer, labor union, or employment agency:

(1) to retaliate or discriminate against a person who has opposed a discriminatory practice or who has made or filed a charge filed a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act;

TEXAS DEPARTMENT OF HEALTH
DIVISION OF FOOD AND DRUGS
1100 WEST 49TH STREET
AUSTIN, TEXAS 78756-3182
(512) 458-7248

REQUIREMENTS/INSTRUCTIONS FOR REGISTRATION AS A FOOD MANUFACTURER

Section 28, Article 4476-5, V.T.C.S., Texas Food, Drug and Cosmetic Act, requires all manufacturers of food located within the State of Texas to register annually on or before September 1st with the Texas Department of Health.

The term "manufacture", as defined in Section 28, shall mean the process of combining or purifying articles of food and packaging same for sale to the consumer, either by wholesale or retail. Any person, firm, or corporation who represents itself as responsible for the purity and the proper labeling of any article of food by placing or having placed its name and address upon the label of any food shall be deemed a manufacturer and shall be included within the meaning of this section. A person, firm or, corporation who harvest, packages, washes, or ships raw fruits or vegetables is not included with the meaning of this section.

Examples of types of food manufacturers: Bakery/grain products, confectioners, beverages, bottled water, ice, honey/syrup products, nut/nut products, canneries, food supplements (vitamins), food additives, flavors/spices, condiments/dressings, meat markets, repackers, label with

Texas address.

7. (a) Any person who manufacturers. food in this state who doesn't comply with the registration requirements of this section commits an offense.

(b) An offense under this section is a class A misdemeanor.

f. This Act may be cited as the Texas Food, Drug, & Cosmetic Act. ART. 4476-5 Public Health Title 71. 40 pages small print. All sections adhere to Federal Regulations and EPA guidelines and statutes unless specifically exempted by legislation permitted under Federal Statutes.

RULES ON FOOD SERVICE SANITATION

(State of Texas Seal)

Texas Department of Health

Division of Food and Drugs

Austin, Texas

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§229.161 Purpose; §229.162 Definitions; §229.163 Food Care; §229.164 Personnel; §229.165 Equipment and Utensils; §229.166 Cleaning, Sanitization, Storage of Equip. Utensils; §299.167 Sanitary Facilities and Controls; §299.168 Const. and Maint. of Physical Facilities.; §299.169 Mobile Food Units; §229.170 Temporary Food Service Establishments; §229.171 Inspection and Enforcement;

Sec. 6-5-2. Supplying adulterated or misbranded food.

It shall be unlawful for any person to charge, to possess with intent to supply, to offer or expose for supply, to sell, or to supply with or without charge any food which is adulterated or misbranded. All food shall be prepared, packaged, transported and supplied in compliance with the provisions of Article 4476-5 of the Civil Statutes of the state. (Texas Food, Drug and Cosmetic Act). (Code 1967, § 12-2; Ord. No. 810219-D, pt.2)

Sec. 14. Proof of ordinance.

An ordinance of the City of Austin may be proved prima facie by a printed code of ordinances purporting to be printed by authority of the city, or by a copy of the ordinance certified by the city clerk to be true copy of the same, or by the city clerk official record thereof.

State law reference - Similar provisions. Vernon Ann. Civ. St. art. 1176a,§5.

Sec. 1. The city manager.

The council shall appoint a city manager who shall be the chief administrative and executive officer of the city. He or she shall be chosen by the council solely on the basis of his or her executive and administrative training, experience, and ability.

Sec. 2. Powers and duties of the city manager.

The city manager shall be responsible to the council for the proper administration of all affairs of the city and to that end he or she shall have power and shall be required to:

(1) Appoint and remove any officer or employee of the city except those officers appointed by the council and except as otherwise provided by this Charter.

(2) Prepare the budget annually, submit it to the council, and be responsible for its administration after adoption.

(3) Prepare and submit to the council as of the end of the

fiscal year a complete report on the finances and administrative activities of the city for the preceding year.

(4) Keep the council advised of the financial condition and future needs of the city and make such recommendations as may seem desirable.

(5) Appoint, by letter filed with the city clerk, a qualified administrative officer of the city to perform his or her duties during his or her temporary absence or disability.

(6) Perform such other duties as may be prescribed by this Charter or required of him or her by the council, not inconsistent with the provisions of this Charter.

Sec. 3. Administrative departments.

There shall be such administrative departments as are established by this Charter and as may be established by ordinance, all of which shall be under the control and direction of the city manager. The council may abolish any department or combine one or more departments created by it, but no administrative department shall be created, abolished or combined with another department until the council has obtained and considered the recommendations of the city manager with regard thereto.

Sec. 4. Directors of departments.

At the head of each dept. there shall be a director who shall be appointed, and who may be removed, by the city manager. Such directors shall have supervision and control over their respective departments, and may serve as chiefs of divisions within their respective departments. Two (2) or more departments may be headed by the same individual,

and the city manager may head one or more departments.

Sec. 5. Departmental organization.

The work of each department shall be distributed among such divisions as may be established by ordinance. Provided, however, that no departmental division shall be made until the city manager shall have been heard and have made his or her recommendations with respect thereto. Pending passage of ordinances establishing departmental divisions.

Sec. 6. Interference in personnel matters.

Neither the council not any of its members shall instruct or request the city manager or any of his or her subordinates to appoint to or remove from office or employment any person except with respect to those offices which are to be filled by appointment by the council under the provisions of this Charter. Except for the purpose of inquiry and investigation, the council and its members shall deal with the administrative service of the city solely through the city manager and shall not give orders to any of the manager's subordinates either publicly or privately.

FOOD PRODUCTS ESTABLISHMENTS

Austin City Code Chapter 6-5 Articles I,II, and VI

AUSTIN-TRAVIS COUNTY HEALTH DEPARTMENT

Section 6-5-1. Definitions.

The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Adulterated means the condition of the food:

(1) If it bears or contains any poisonous or deleterious substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or (2) If it bears or contains any added poisonous or added deleterious substance (except a pesticide chemical in or on a raw agricultural commodity and except a food additive) which is unsafe within the meaning of Section 13 Article 4476-5 of the Civil Statutes of the state; or (3) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 13 of Article 4476-5 of the Civil Statutes of the state; or (4) If it is, or it bears or contains, any food additive which is unsafe within the meaning of Section 13 of Article 4476-5 of the Civil Statutes of the state; provided, that where a pesticide chemical has been used in or on a raw agricultural commodity on conformity with an exemption granted or a tolerance prescribed under Section 13 of Article 4476-5 of the Civil Statutes of the state and such raw

agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling the residue of such pesticide chemical remaining in or on such processed food, shall, notwithstanding the provisions of said Section 13 and this clause, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food, when ready to eat, is not greater that the tolerance prescribed for the raw agricultural commodity; or (5) If it consists in whole or in part of any diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for foods; or (6) If it has been produced, prepared, packed or held under unsanitary conditions whereby it may have become contaminated, or whereby it may have been rendered injurious to health; or (7) ---------- (8) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (9) If it is otherwise in violation of Section 10 of Article 4476-5 of the Civil Statutes of the state.

APPROVED means acceptable to the health officer based on his determination as to conformance with appropriate standards and good public health practice.

LAW includes federal, state, and local statutes, ordinances, and regulations.

MISBRANDED means the presence of any written, printed, or graphic matter upon or accompanying food or containers of food, including signs or placards displayed in relation to such products, which is false or misleading or which violates any applicable federal, state or local labeling requirements.

REGULATORY AUTHORITY means the state and/or local enforcement authority or authorities have jurisdiction over the food establishment, or those determined by the commissioner of health of the state as having jurisdiction. The term includes the health officer of the city or his authorized representative.

Sec. 6-5-23. Hearings

The hearing provided for in this chapter shall be conducted by the health office of the city or his designated representative at a time and place designated by him. Based upon the recorded evidence of such hearing, the health officer of the city or his designated representative shall make a final finding, and shall sustain, modify, or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit by the health officer. (Code 1967, Section 12-14; Ord. No. 810219-D, pt.2)

Sec. 6-5-24. Service of notices

A notice provided for in this chapter is properly served when it is delivered to the holder of the permit or the person in charge, or when it is sent by registered or certified mail, return

97h

receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the health officer. (Code 1967, Section 12-15; Ord. No. 810219-D, pt. 2)

Sec. 6-5-33. Suspension.

(a) The health officer may, without warning, notice, or hearing suspend any permit issued under this chapter if the holder of the permit does not comply with the requirements of this chapter, or if the food establishment or operation otherwise constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by section 6-5-24. When a permit is suspended, food operations shall immediately cease. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within ten (10) days of receipt by the health officer of a written request for a hearing.

(b) Whenever a permit is suspended, the holder of the permit or the person in charge shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the health office by the holder of the permit within ten (10) days. If no written request for hearing is filed within ten (10) days, the suspension is sustained. The health officer may end the suspension at any time if reasons for suspension no longer exist. (Code 1967, Section 12-12: Ord. No. 810209-D, Pt. 2)

Sec. 6-5-206 Enforcement

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In addition to the provisions of this chapter, food products establishments shall meet the sanitary requirements of the Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Human Food (21 CFR Part 110) issued by the United States Department of Health and Human Resources, Food and Drug Administration, three (3) copies of which shall be on file with the city clerk. (Code 1967, Section 12-61; Ord. No. 810219-D, pt.2)

Part 110

Current Good Manufacturing, Processing, Packing, or Holding Human Food

Subpart A - General Provisions

Section 110.1 Current good manufacturing practice.

The criteria in sec. 110.10, 110.19, 110.20, 110.35, 110.37, 110.40, 110.80, and 110.99 shall apply in determining whether the facilities, methods, practices, and controls used in the manufacture, processing, packing, or holding of food are in conformance with or are operated or administered in conformity with good manufacturing practices to assure that food for human consumption is safe and has been prepared, packed, and held under sanitary conditions.

Section 110.3 Definitions.

The definitions and interpretations contained in section 201 of the Federal Food, Drug, and Cosmetic Act are applicable to such terms when used in this part. The following definitions shall also apply:

(a) "Adequate" means that which is needed to accomplish the intended purpose in keeping with good health practice.
(b) "Plant" means the building or buildings or parts thereof, used for or in connection with the manufacturing, processing, packaging, labeling, or holding of human food.

* From the Code of Federal Regulations Title 21, Chapter 1
Authority: Secs 402 (a) (4), 701 (a), 52 Stat. 1046, 1055, (21 U.S.C. 342 (a) (4), 371 (a)), unless otherwise noted
Source: 42 FR 14338, Mar. 15, 1977, unless otherwise noted

Section 110.35 Sanitary facilities and controls.

Each plant shall be equipped with adequate sanitary facilities and accommodations including, but not limited to, the following:
(a) Water supply. The water supply shall be sufficient for the operations intended and shall be derived from an adequate source. Any water that contacts foods or food-contact surfaces shall be safe and of adequate sanitary quality. Running water at a suitable temperature and under pressure as needed shall be provided in all areas where the processing of food, the cleaning of equipment, utensils, or containers, or employee sanitary facilities require.
(b) Sewage disposal. Sewage disposal shall be made into an adequate sewerage system or disposed of through other adequate means.
(c) Plumbing. Plumbing shall be of adequate size and design and adequately installed and maintained to:

(1) Carry sufficient quantities of water to required locations throughout the plant.

(2) Properly convey sewage and liquid waste from the plant.

(3) Not constitute a source of contamination to foods, food products or ingredients, water supplies, equipment, or utensils or create an unsanitary condition. (Emphasis Mine)

TEXAS DEPARTMENT OF AGRICULTURE (LOGO) TRAVIS COUNTY FARMERS MARKET AT HIGHLAND MALL

April 17, 1986

TO: Texas Growers/Producers

FROM: Deanne Desjardin, Market Manager

RE: Health Department Regulations

I recently met with the Austin Travis County Health Department representatives regarding their operation requirements for the 1986 Travis County Farmers Market at Highland Mall. I have attached an outline of these regulations. Please read them thoroughly.

If you sell processed foods you must have available a copy of your State permit number or inspection report at the time of set-up or you will be unable to sell those products. If you have any questions about obtaining a permit, please contact:

Mr. Barney York, Austin Travis County Health Department (512) 469-2067

Although they may pose some difficulty, these requirements are necessary to insure safety of consumers. Your compliance is required by law and your cooperation will be appreciated.

Thank you.

A PROGRAM OF TRAVIS COUNTY EXTENSION SERVICE

AUSTIN TRAVIS COUNTY HEALTH DEPARTMENT
REGULATIONS. TRAVIS COUNTY FARMERS MARKET.

RESPONSIBILITIES OF ALL VENDORS:

1.) A sign shall be posted at each food service booth which states the name of the vendor and the name(s) and address(es) of food suppliers. This information shall also be provided to the event organizer. *Not done by Mall 1986 (on original Record copy)*

2.) As much as possible, all food shall be protected form exposure to dirt, dust and insects. Preparation must minimize exposure to any potential contaminants.

3.) Food must be obtained from approved sources. Food containing potentially hazardous foods (meat, fish, shellfish, poultry, eggs and dairy products) must only be shipped from or prepared in a food establishment approved by the Health Authority. No home preparation of food is allowed. *Not enforced 1986*

4.) All potentially hazardous foods shall be kept either at temperatures of 45° F or below or at temperatures of 140° F or above continuously from point of origin to service to the public. Eggs must be stored and refrigerated at 60° F or below. A thermometer must be supplied.

5.) All products will be kept at least two feet (2) off the ground.

RESPONSIBILITIES OF ALL PROCESSED FOOD VENDORS: (Processed Foods include jellies, spices, baked and canned foods)

Pfe

1.) All Processed Food vendors must register with the State and obtain a State I.D. number. *Not enforced by Mall 1986*

2.) All vendors of prepared foods must have proof that they are being prepared in an approved kitchen, to be shown to Market Manager prior to set-up. (i.e. Health Dept. Permit number, inspection report, etc.) Not enforced by Mall 1986

3.) All prepared food must be individually wrapped in advance (NO OPEN FOOD PARTICULARLY BAKED PRODUCTS)

NO SAMPLES MAY BE SERVED WITHOUT PERMISSION

4.) All prepared foods must be labeled with ingredients, name and address of preparer. *Not enforced 1986*

Food Manufacturer License, 1986, 1988

(Permits in force 1984 to August 1989)To Date

FOOD MANUFACTURER REGISTRATION

RECEIPT NO. 002479

TEXAS DEPARTMENT OF HEALTH

This registrant has paid the required fee of $100.00 and is authorized to engage in the manufacture of foods for the fiscal year ending August 31, 1986, pursuant to Article 4476-5, Texas Civil Statutes, Texas Food, Drug and Cosmetic Act.

(State Seal)

ESTB. I.D. No. 062273141 85/09/13

STARY MORAVSKY (OLD MORAVIAN)
Box 541
Manchaca TX 78652

STARY MORAVSKY (O. M.)
Forks of Bear Creek
Manchaca
TX 78652

TEXAS DEPARTMENT OF HEALTH

Division of Food and Drugs

RECEIPT NO. 23403

Pursuant to Article 4476-5, Texas Civil Statutes, Texas Food, Drug and Cosmetic Act, this registrant has paid the required fee of $25.00 and is authorized to engage in the manufacture of foods for the fiscal year ending August 31, 1989.

(State Seal)

C.F.N. 012270157 10/03/88

STARY MORAVSKY (OLD MORAVIAN)
Box 541
Manchaca TX 78652

STARY MORAVSKY (O. M.)
Forks of Bear Creek
Manchaca TX 78652

Owner Name: R. D. Hejl Establishment Name: Stary´ Moravsky´ Address: Forks of Bear Creek

Food Service Establishment Inspection Report

(44 items on inspection report - only marked items listed here. All others pass) Inspecting agents comments ( ).

Food Protection	WT
04 Facilities to maintain product temp. (outside)	4
Food Equipment and Utensils	
15 Non-food contact surfaces: Designed, constructed, maintained, installed, located. (seal drawers)	1
Water	
27 Water source, safe: Hot & cold under pressure (well not approved)	5
Sewage	
28 Sewage and waste water disposal (greywater)	4
Plumbing	
29 Installed, maintained (well pump out)	1
Garbage & Refuse Disposal	
34 Outside storage are enclosures constructed, clean: controlled incineration	1
Floors, Walls, & Ceilings	
37 Walls, ceiling, attached equipment: Constructed, good repair, clean, surfaces, dustless cleaning methods	1

F10b

RATING SCORE 83 Inspected by Bill Splawn

Title: SIT

ITEM NO.	REMARKS	CORRECTED BY
04	-Refrigerator and freezer outside - must be inside	5 days
15	-Seal drawers in cabinets in kitchen and edges of shelves	10 days
27	- Well has not been inspected or approved by State Health Dept.	immediately
28	- Grey water system not inspected or approved by County Health Dept.	immediately
29	- Well pump line broken	immediately
34	- Outside area must be cleaned up (rubbish, refuse) to prevent rodent and insect harborage.	30 days
37	- Walls & baseboards must be sealed in kitchen and storage area.	10 days

DRAWING: Showing subterannean greywater disposal system from grease trap to double ended perforated 4" pipe system. Buried in 24" x 18" gravel field, capacity 500 gal., waters 2 pecan trees. Average daily input 100 gal. max.

Heji Comments:

04 - The refrigerator was outside because the last coat of paint was being applied to the walls of the commissary.

15 - Did not know that the insides of the drawers were to be sealed; prefer clean, white paper which can be regularly

change, and will show any uncleanliness. Edges of shelves were sealed with sealer. Had to put on wood edging.

27 - This demand was unlawful. Well was not required to be State inspected, by the,law and statute, and it was necessary to give them the State Rules, which they STILL refused to believe.

28 - Greywater was used, since there are no nutrients in the discharge form this commissary (actually a Detached Kitchen) and a septic tank therefore CANNOT work! The sanitarian said to run it into my household septic system, which would have destroyed its operation, due to the excess chlorine in the water used for sanitizing utensils. Grey water is an accepted "wastewater disposal using an INNOVATIVE system." It was within my right to appeal this system to both the County Commissioners and to submit the plans to the Texas State Dept. of Health for approve. The State inspector looked over and remarked that "it looks to me like it will work Okay and I don't see any signs that it has malfunctioned." (It is at least 500% oversize, and only about 30 gallons per week (max.) of chlorinated soapy water goes down the drain.)

29 - The well was supplied by a jet pump, and in an effort to increase pressure the day before the inspection, the plastic line burst in the well. The pump was replaced with a submersible pump.

34 - Construction waste that had not been hauled off, pots

and cans that are used for potting plants. (No rats & rodents due to presence of Mischa, my dog.)

37 - This demand was made for new construction, free of insects, etc., and is not made upon old, insect infested stores and eating establishments in the area.

While it did not require much expense, it makes you wonder about some rules. This inspection was made on May 15, 1986, and all corrections made within 10 days. The well certification and greywater were appealed. The letter which I sent the Commissioners told the truth, and I have NO intention of joining a farmer's union... even if they said they would pay my dues. There is NO place for discrimination or retaliation by government.

F 11 9

Rules and Regulations for Public Water Systems

Adopted 1978

(Texas State Seal)

Texas Department of Health Water Hygiene Division

.010. Appendix B "Approval" Requirements

(a) Public water supply systems which are State "Approved" must exceed the minimum acceptable standards of the Texas Department of Health and have the privilege of erecting signs denoting this honor. To achieve this recognition, the following standards are to be met:

(1) Physical facilities shall comply with the latest "Rules and Regulations for Public Water Systems".

(2) Water quality shall comply with the criteria as prescribed by the Texas Board of Health.

(3) The system operation shall comply with applicable State Statutes, Article 4477-1, Vernon's Texas Civil Statutes, and with minimum acceptable operating practices.

(4) There shall be a minimum of two Certified Operators with additional required for larger systems.

(5) The system shall have at least two wells, two raw water pumps or a combination of these; of sufficient capacity to provide average daily consumption with the largest well or pump out of service. This requirement also to apply to treatment plant pumps necessary for operation. (Note: See rule .003(b) Water quantity).

(6) Treatment facilities shall be as required with standby units for chemical feeders and chlorinators.

(7) Two or more pumps shall be installed to supply each

section of the distribution system or each pressure level.

(8) Total storage (ground and elevated) shall be equal to average daily consumption, or 185 gallons per capita, whichever is less. Pressure tanks shall not be considered as storage.

(9) Elevated storage (included in above) equivalent to 50 percent of average daily consumption or 55 gallons per capita, whichever is less, with a minimum of 5.0 MG required, shall be provided for each section or pressure level of the distribution system.

(10) An up-to-date map of the distribution system shall be maintained and kept in a safe location.

(11) Meters shall be required for production facilities and service connections.

(12) The water system shall be generally well maintained and the facilities present a pleasing appearance to the public.

(13) An adequate plumbing ordinance or regulations for sanitary control of the distribution system must be adopted and enforced.

(14) Prior to approval or reapproval, the system must be inspected and evaluated by Texas Department of Health personnel as to physical facilities, appearance and operation.

CERTIFICATION OF WATERWORKS OPERATORS

Texas Department of Health Division of Water Hygiene
110 West 49th St. Austin, Texas 78756-3192
Telephone (512) 458-7536

GENERAL INFORMATION

SECTION 11(A) OF THE TEXAS SANITATION AND HEALTH PROTECTION LAW PROVIDES THAT "NO DISTRICT, MUNICIPALITY, FIRM, CORPORATION, OR INDIVIDUAL SHALL FURNISH TO THE PUBLIC ANY DRINKING WATER FOR WHICH ANY CHARGE IS MADE, UNLESS THE PRODUCTION, PROCESSING, TREATMENT, AND DISTRIBUTION IS AT ALL TIMES UNDER THE SUPERVISION OF A COMPETENT WATERWORKS OPERATOR HOLDING A VALID CERTIFICATE OF COMPETENCY ISSUED UNDER THE DIRECTION OF THE TEXAS DEPARTMENT OF HEALTH.

TRAINING

EXAMINATIONS

FEES

Form: H-48 Revised 9-85

F 12 c

Commissioners Court
County of Travis, Texas
Courthouse annex
Austin, Texas 78701

Rob't D. Hejl
Box 541
Manchaca, Texas
78652-0541

June 9, 1986

Dear Ms. Reed,

I have been having some difficulty in obtaining approval of my "detached kitchen", or commissary, and after four weeks of buck-passing, excuses, etc., I believe that some of my information may be pertinent to your solving the dilemma of insufficient revenue for the coming budget.

The people who are involved have treated me with what I could describe as reasonable courtesy, even though there seems to be a sever disparity in the manner in which certain regulations are being enforced in Travis County. As each involved stated, "we are just doing our job."

Had I known what I was getting into, I would have never started! I farm and ranch, and finding a market for my produce has never been too successful, and the prices which it brings are terribly variable as well as seasonable, with plenty of competition. There is always the dilemma of blemished, but good fruit, and there is no market for the plentiful wild fruit which grows here. People today no longer have the grandmothers who once knew the secrets of home canning, preserves, and jellies.

In my own case, I MUST freeze, preserve, and can my own food to survive. I was poisoned in 1967 by DDT, and must eat feed free of pesticides, additives, etc., and must

drink dechlorinated or chlorine-free water just to survive. Since I do this for myself, and everyone thought the preserves and jelly were the best that they had ever tried, it just fell naturally to try to utilize the fruit that could not be quickly sold in products that would be sold at leisure. Most fruit cannot be stored over 30 days, and requires elaborate refrigeration facilities.

I sell at the Travis Co. Farmer's market at Highland Mall. A 25 dollar State permit was required in 1984, and I was told that the jelly would have to be made in a detached kitchen. Although many vendors sold similar products, I was the only one with a State Food manufacturer's permit, and the only one complying with proper labeling. Last year the permit jumped to $100, and it took a bit of thought before I decided to renew it. You have to sell a lot of jelly to just pay for the permit. We were also told that we had to have an approved commissary if we were to be in the 1986 market, so all spare time at the farm was spent in trying to get the structure in conformance with the many rules.

Remember, this is not a business, it is a means of marketing my product, and the processing id done ON THE FARM. I am alone, and must operate all farm/ranch operations as well as try to get things done with this kitchen. My income is usually less that $2,000 per year, and everything I can spare is tied up in the materials for this enterprise. This year will be especially bad unless this thing gets going, since the fruit crop failed, and what little did make it is being destroyed by deer, raccoons, and squirrels. The

income from vegetables is minimal. and cattle are at just about rock bottom on the market. The kitchen has cost so much that I am going to have to resort to some baking just to pay for what I have already spent, and the $60 per month deep freeze electric bill...which in 10 months has exceeded any profit which can be made this year.

The permit seems to be held up by two things, A. The well water, and B., the "grey water" from the sink in the commissary.

A. The well water is Edwards, and is used universally by everyone in this area, with no known ill effects. I MUST drink chlorine free water. The water is used in extracting the juice from fruit (212-200° F) and in washing of utensils, pots, and other hardware. All items involved go through"sanitization"; all canning jars are sterilized by heat or steam from 215°F to as high as 240°F, and the products may be subjected to heats in excess of this temperature in cooking. All baked goods are baked at 425°F, so there can be NO danger of any bacterial contamination. Baked goods will be made in disposable aluminum pans, so there is no transfer bacteria, and all products are hermetically sealed in poly bags to deter contamination OR tampering, and are dated. If there was any thing wrong with the water, I would be dead, since I am hypersensitive to thousands of things!

Disparity? There are hundreds of wells in the area, and Travis County that indeed serve "public water" that are not in line with what is required in my case, and range from the Post Office to stores, beer joints, swap shops, and service stations,

Legion Posts and Mason, Elk, and others. What abut residences where the water is used, untreated, for drinking...and nothing is done. If their argument is EPA, maybe EPA should be required to do the testing. In the meantime, non-issuance of my permit is costing me money. B. Investigation into many sources reveals only one conclusion, rendered by a public official..."they really don't know what they are doing to begin with." (He said it a bit differently) My own design is the practical and logical solution. Everyone should be aware that under Federal Regulations, I could just run the water into my field and water the crops. I was told by a City of Austin official to install a grease trap in the line (mine is way oversize, and contains a gauze stainless particulate filter) and run the grey water into a dispersion bed of gravel through perforate pipe. This was done, and the installation is not only 400 - 500% oversize, it can be expanded at any time by simply adding onto each end of this field, to water additional pecan trees by subsurface irrigation. I personally ran a percolation test, and it verified what I already knew. I am not told that my system will have to be designed by an engineer and re-done, and the county will have to run the perk test. Remember, this is in the middle of 73 acres, out in the boondocks, and the nearest neighbor (Radowsky) has seriously polluted Bear Creek since shortly after the house was built, and other up the creek are doing likewise. Although this matter has been brought to the attention of State and County, nothing has been done to stop it. Oh, engineers design these systems. And where are the

folks who opposed the oil line, but have done little to stop Randy Morine from directly, (YES, directly) infiltrating the Edwards Aquifer with sewage effluent? Like Horatio at the bridge, I am the one who has thus far stopped this travesty of justice and adjudication.

You will find that I am the environmentally conscious person in the area, believing like the American Indian that those who destroy the environment destroy themselves.

There is NO reason that my permit should be withheld any longer, and unless it issues, the County Health Department is certainly discriminating, as hundreds of places serving the public from wells, and with defective septic systems, many located quite close to wells, are still permitted to operate.

Persons with AIDS, venereal diseases, open sore, respiratory problems, etc. are working in food handling places. Shrimp vendors operate with impunity, and they want me to turn them in; That's the job of the sanitarian, not mine. And others, selling bar-b-cue, fajitas, tamales, tacos...but here, you had better be careful

These folks (and they don't have commissaries, or use labels are making an honest (?) living. If we shut them down by requiring enforcement of the rules, what will they do? Easy...get on the public dole, food stamps, free cheese, etc. (all at the tax-payers expense.)

There really should be a happy medium somewhere between the extremes, if someone will use a little horse sense, although I am afraid that this reasoning no longer exists except with some of us older folk who used horses for

transportation and work, not recreation.

Therefore, consider this letter a Request For Waiver, Petition for Exception, or whatever some highly paid lawyers would call it. I cannot afford the expense of any further engineering, etc. and need to sell something so that I can get back on the grocery list for those things that I can't grow. The farm expenses are eating the pocketbook alive.

I would include the three pages of specifications which I submitted to Ms. Dunkelburg, but she has not sent the letter or the copies which she was supposed to send last Wed., so as usual, no one is in a hurry. I will appreciate any assistance you may give, and I do have suggestion on how to save tax dollars. Sincerely yours, (Robert D. Heil)

P.S. I offered to use commercial bottled water, but they said no. The County sell water from trucks that I don't believe are approved by the U.S. Public Health Service. Don't know of anyone ever hurt by this, either! We are going to nit-pick ourselves into poverty. In the meantime, thousand die from tobacco, drugs, and alcoholism, our REAL health problems, not to mention the contamination of produce by pesticides, many of which are supposed to be banned.

So that you might see how discrimination works...the 4-H and FFA teenagers are selling at the Market in non-conformance with certain Health Dept. regulations. Do I carte? NO! I support these kids 100%, and what they are doing is not of any consequence to me, nor does it constitute any real or imminent health hazard.

The bakery products which they sell (similar to what I want to sell, are from a bakery in Flatonia, Texas... well made, sanitary, well labeled and packaged. In checking with the State Health Dept., it seems that their will is not "certified". However, since THEIR health inspector has a different set of rules, everything is o.k. for them to sell at the market. Something seems odd, here.

The 4-H kids want to bake their own products, and I would certainly encourage this. but there are regulations, you know. They cannot use the excellent and sanitary kitchen used for home demonstration at the Extension Office "because is is not a commercial commissary."

I'll guarantee one thing, the next Legislature is going to make some changes in the rules. While I do not advise anyone to enter the field of agriculture, I suppose there will always be those who put the joy of growing things ahead of financial gain. You don't have to be crazy to farm, but it sure helps, and I will help any young person who wants to try. I say, let these kids cook their own products in the Ext. kitchen! (Or even at home). I 've had to report to the St. Health Dept. that City of Austin water was contaminated with bacteria on two occasions. Each time the City denied it until the Health

Dept. verified my findings. My clinic microscope doesn't lie!

Commissioners Court
County of Travis, Texas
Courthouse annex
Austin, Texas 78701

Rob't D. Hejl
Box 541
Manchaca, Texas
78652-0541
June 9, 1986

Dear Ms. Reed,

After consulting with the Attorney General's office, this matter of segregation and discrimination is being brought to your attention. The enclosed copies of letters are self explanatory.

The Travis County Farmer's Market exists due to the efforts of the Travis County Commissioners Court, including the County Judge, and the Travis County Agricultural Extension Service, and all of us who farm/ranch in Travis County and the surrounding area are grateful for your efforts in our behalf.

Highland Mall entered into the picture, not just because of any gratitude in their hearts, but because it seemed to be a practical means of drawing potential buyers to their merchants. From my own investigation, it did prove to be highly successful to the Mall, and those of us who sell there have also found a ready market for good wholesome produce that otherwise might be lost.

However, there are some who believe that ALL farmers should organize, and here we have the root of the beginning of discrimination. Highland Mall may or may not have been the instigator, but there is one things certain...If public funding

is used for the promotion, extension, assistance, or whatever, there can be no discrimination OR segragation. You will find that I am correct Constitutionally, statutorily, and legally by ordinance and regulation. The Mall disagrees, so this legal determination will begin with you.

You should be aware that there are apparently only FOUR Travis Co. producers at this market, including myself, so you are subsidizing other producers and a lot of produce BROKERS. There is one thing certain, I definitely qualify as a farmer-producer. Many of those selling at the market by one half of their produce from the markets on San Antonio or the valley, with much of the produce actually coming from Mexico. Most of those who joined the "Association" did so to obtain the lower stall fee, and some of those who joined definitely are fraudently qualified, if their definitions of each category are followed.

Another recent decree is that no produce from out of state can be sold. Evidently these people do not know that Texas exports more than it imports, and the Tamalipas and Coahuila are NOT states in this Union, or part of South Texas.

One of my primary reasons for not joining the "Association" is that those who join are then jointly legally responsible for any liability incurred by the "Association", whether due to a member or by some accident, and I can assure you, the Market is definitely an "attractive nuisance" and filled with existing dangers. Some of the vendors may own only a pickup, but some of us now own some very valuable property, according to the tax office.

While their reasoning seems to be that the "Association" can find better markets for the producer, who should not forget the the Dept. of Ag. & the Extension office have spent thousands of dollars in trying to find markets, with little success. I am afraid that their by-laws and reasoning are going to lead them into some serious legal and financial problems, since they now intend to "hire someone" to do their proposed things.

While I could pay the $20 and get the $10 stall rate (and there sure is a lot of pressure from some to do so) there is a principle involved, and I do not tolerate any form of discrimination, and have earned the right to question and protest and settle Constitutional matters. Although it has been paid in protest on every lease agreement, the fee of $20.00 has been paid when it should be $10.00. In addition, I was "segregated" into a tent for "dealers" although I had reserved a different tent where I had been the previous two years.

I have never asked for anything more than to be treated as what I really represent, a Travis County grower-producer, who has such a diversity of crops as to definitely qualify. Since the Mall and the Mall representative have adamantly refused to recognize my status, it will first receive you attention, and that of the County Judge and the District Attorney. Since this discrimination has been done with intent to coerce, I would suggest a satisfactory solution of refund to excess, with max. interest, and whatever punitive damages you feel are necessary to remind the lessor that discrimination MUST

NOT exist.

The Mall representative has stated the "if the number of members exceed the number of stalls, I will have to be moved outside the tent." This would be an excellent way to invite my attorney to participate, I have attended all Saturday sales for two years, and intend to do so this year unless physically unable, so I hope that my reservations are honored, even if reluctantly.

Your investigation into this matter will be appreciated.

Respectfully,

Robert D. Heji 1/187

THOUGHTS

PLEASE...PLEASE...PLEASE, DON'T play that damn bluegrass music constantly! It just about drove some of us out of our minds last year, and I can't repeat what a lot of the customers said. Not everyone who sells or buys here is a "kicker" or hayseed. There are a lot of us who appreciate GOOD music, although I do listen to everything except rock. .....You may be unaware of it, but unless at least 75% of the members of the association register as agents or dealers, you will have a bunch of people who have falsely signed their applications, if we judge by what different vendors have told me. Not too many grow their own. This is why I object to having them sign what is the equivalent of an affidavit.

Public liability really worries me. The market can easily be described as an "Attractive nuisance". It is bad enough to have dozens of loose, wild, and unattended kids running around like a herd of mustangs, but there are a lot of old people, invalids, and even drunks wandering around with their eyes anywhere except where they are going. PLEASE, lets get those tent stakes covered with some padding of some kind! The extension cords MUST be removed from across the tent. Trash cans need to be in some sort of box, and the tent poles should be candy-striped with fluorescent red. Yes, they run onto the pole. We cannot afford to fly up and down to get to the washbasin, and the travelin' Johns should be put on a steady base so that they don't rock.....someone needs to keep them clean, too. This was BADLY abused last year, as well as failure to pump out

regularly, leaving them AWFUL!

The cold drink vendors found it unprofitable, even though they ripped off the customers, which was not appreciated. After they left, I sold cold drinks for the going retail of 60¢ to accommodate the vendors, mostly. Would like to sell fresh fruit drinks, but can only do this from the mobile vendor's vehicle, so if you want me to sell drinks, say in advance.

Hope you folks realize that a diversity of vendors definitely helps the market, and whenever one leaves that has a particular or unique product, we loose a lot of prospective customers who come out just for that specific product. That is one reason that I don't discourage renting to dealers, as they sometimes bring things that we don't grow locally.

Since most of the vendors obviously are not familiar with the rules and regulations governing public sales of produce, it might be a good idea to schedule a meeting prior to opening and have someone from the Health Department give a lecture. While each individual is personally responsible for compliance, any serious infraction which is not immediately corrected CAN result in the closing of the market and charges brought against Highland Mall. For most vendors, only the basic health and sanitation regulations apply.....unfortunately, some of these are the most frequently broken.

Any cooked, prepared, packaged, frozen, or canned, (etc.) products MUST be prepared in an inspected and yearly approved "detached kitchen" or food service establishment. The minimum state permit is $100.00 and MUST be currently dated and unexpired at the time of sales. My own

recommendation here is that the permit, or a copy thereof, must be prominently displayed beside the vendor's identification sign, and the identifying number from this permit should be copied under or beside the signature and name on the lease agreement. Until the Market Manager gets to know the vendor personally, it might be a good idea to list just exactly what the vendor intends to sell, as certain foods have certain limiting requirements.

(Last year we had some problems with a sausage vendor who sold beyond his expected time, but that didn't bother any of us. However, there were a lot of jelly, pickle, relish, and other processed food sales that NEVER were in compliance, and none had the State permit. The sales of shrimp and homemade butter were totally in non-compliance. The Viet Nam bakery people continued in non-compliance in both display, handling, and packaging although warned repeatedly by the inspector. The cold drink vendor did not have a properly equipped mobile vendor's trailer, nor was it inspected or licensed.)

To my knowledge, I was the only one with a valid State permit, and I have tried to conform to all required permits and regulations. It has been necessary to build a specially equipped mobile vendor's trailer and pay the $35 City of Austin fee so that I will be in compliance to sell bakery products made from fresh fruit. My deep freeze bill for the past 7 months will probably absorb all my profit!

The basic requirements: ALL vendors must be identified by name and address. My personal opinion here is that this identification should be in letters of at least 2" height so as to

be easily read by anyone.

There may even be some regulation on the City rules on this. ALL persons using the rest room MUST wash their hands afterward. This IS NOT being done. Fruit and vegetables should be clean and free of dirt. Some fruits and vegetables keep better if not washed, but they should not have any rot, fungus, stains, or trash on them. If the produce has been treated or sprayed with a pesticide, they SHOULD be washed. ALL vendors should be fully aware of the proper use of pesticides, and ALL users of pesticides on vegetables are supposed to have completed a course and be approved for the use of pesticides. where pesticides are used, they should be used only according to prescribed rate of dose and application, and the proper expiration of time between application and sales should be exactly followed. I would suggest that the market manager learn to recognize pesticides by smell, and reject any produce that retains ANY odor of pesticides, as it is obviously overdosed or the proper expiration of time has not been followed.

The word "organically grown" is only applicable to produce which has been grown without the use of pesticides, herbicides, fungicides (etc.), and must be fertilized only by vegetable (natural) or animal fertilizer. My use of chemical fertilizer keeps me from using the word "organic". I have tried both ways, and prefer cow manure, but all of mine has weed seeds, so it is used in the orchards, where it gets excellent results.

I continue in farming because I MUST grow my own pesticide-free food. I was poisoned by DDT (almost fatally) in

1967. There are other who, like me, must each pesticide-free food, so I hope that those who use pesticides on their produce will let their customers know this fact, even if it means a loss of sale.

While the fruits and vegetable are not government inspected, all vendors should adhere to Dept. of Agriculture rules and regulations, especially concerning quarantine areas. Last year some sweet potatoes containing borers were sold. Since they were more like "culls", I would suspect that they came from a quarantined area. This doesn't help the local grower a bit, and this is how pests spread.

There are regulations about cutting fruit and vegetables for sampling, but no one seems to pay any attention anyway, so if the public wants to risk their health, let 'em.

We really need a dumpster or a very large trash bin with a covered top. Spoiled fruit and decaying vegetables attract flies, and when this is dumped in the small trash cans, the flies quickly find their way onto the tables. We probably won't have the dust problem this year since the construction nearby is about over.

Some vendors served "samples". We do need some guidelines here. You CANNOT re-use plastic spoons, etc., even if sanitized. Food should not be handled with bare hands if served, either.

Suggestions: ..... The electric outlets should be brought to the outside edges underground. The present use of extension cords is an open invitation to disaster, and I believe that it is illegal, since this is a public marketplace.

..... Conversations with customers for the past two

years shows that they like a causal, open market style, not the supermarket style which you people seem to prefer, where we have row upon row that virtually resemble the supermarket.

From Rules of Travis County for Private Sewage Facilities

(2) Approval of Innovative Designs

Agencies vested with the responsibility of enforcing septic tank regulations are encouraged to use feasible innovative designs which are not specifically covered in this construction standard. Texas is a large state with many different types of topographical, geological and climatic conditions. New systems may be conceived in the future to meet requirements demanded by these conditions and the systems may differ from the specific use of innovative systems is encouraged, however, to both assist local regulatory agencies in determining the reliability of a new system and protect the public from improperly designed systems, the Texas Department of Health will review and evaluate new systems on an individual basis. Systems found to be designed in accordance with good engineering practice will be approved by the Texas Department of Health.

EXHIBIT "A" P 15 a

(TM) #9683 T Travis County Farmer's

#360617 ATCHD Environmental Health Services

Complaint/Request Report Time 9:2

Location Farmer's Market Highland Mall

Lot or block Street Tax Parcel

Business Name

Compl/req Name Censored Censored Censored Phone Censored Address Censored

Comm/Counc/Man Report to

Complaint/Request: Robert. Heil is selling home canned jellies. He has applied with is to establish a commissary but it has not been approved. Has water and sewer problems (in the county). The market is open today for 4 to 7 and Saturdays from 8-2. Please let me know what you find (initials) ESC

Referral: Program/person 01/ CN / / Init. Resp. Date 860617

Report: L12 Visited farmer's mkt. (strikeover) (Tuesday/ Saturday) afternoon: Mr. Heil was not at the market. Another vendor said Mr. Heil was only there on Saturdays now. 6-19-86 Spoke with (censored) - Robert may operate until the 28th of June and then must cease until well and septic system approved.

Completed date: 860619 Clearance time 3 (days)

Supervisor W. M. Y. Dis Code 06

File City Gen ___ County Gen ___ Food __ PC ___ WC __

AP ___ VC __ RC ___

67

(notation)

6-25-86 Spoke to (censored) to let her know what we are doing

7-7-86 Robert has ceased to operate at Farmers market - will still keep an eye on him.

(3 different sets of script)

Art. 6252-17a. Access by public to information in custody of governmental agencies and bodies.

This lengthy document is on Record R0077-R0083
7 pages small print.

Penalties

Sec. 12. Any person who willfully destroys, mutilates, removes without permission as provided herein, or alters public records shall be fined not less the $25 nor more than $4,000, or confined in the county jail not less than three days not more than three months, or both such fine and confinement.

(Seal of City of Austin)
CITY OF AUSTIN
Austin-Travis County Health Department
Bureau of Environmental Health Services
15 Waller Street
Austin, Texas 78702

July 7, 1986 CERTIFIED P 065 667 154

Robert D. Hejl
Box 541
Manchaca, Texas 78652-0541

Dear Mr. Hejl:

This is to notify you that selling of food or food products, including canned jellies and jams, and baked good other than unprocessed raw vegetables and produce, which were not produced in an approved food establishment is a violation of the City of Austin Code Section 6-5-2. If you continue to do so after the receipt of this notice, legal action may follow.

You must sell only products which are produced in a commissary approved and inspected by the Austin-Travis County Health Department. In order for the commissary you are operating on your property on Manchaca known as the "Forks of Bear Creek" 73 acres out of the Walker Wilson Survey #2, to meet the requirements for approval the following improvements must be made:

1. The facility must be constructed and operated in compliance with the Texas Department of Health's Rules on Food Service Sanitation. Those items of noncompliance

noted on our inspection on May 15, 1986. A copy of that inspection report is attached.

2. The private sewage facility for the commissary must be brought into compliance with the Rules of Travis County, Texas for Private Sewage Facilities.

3. Water that is free from bacterial contamination and any excessive chemical must be available. In addition, your water well must be protected from surface contamination by a concrete slab that extends at least three feet around the well head and by sealing any external opening in the well head.

In conclusion, I want to remind you that the selling of any product produced in this establishment prior to your receiving written approval from this office is a violation of the law.
(end of page 1)

If you have any questions, please call me at 469-2016.
Respectfully,

(Fred Rodgers)
Fred Rodgers, P.E., Chief
Bureau of Environmental Health Services
FR:cb
Enclosure

FOOD PRODUCTS ESTABLISHMENTS

Austin City Code Chapter 6-5 Articles I, II and VI

AUSTIN-TRAVIS COUNTY HEALTH DEPARTMENT

Sec. 6-5-33. Suspension.

(a) The health officer may, without warning, notice, or hearing suspend any permit issued under this chapter if the holder of the permit does not comply with the requirements of this chapter, or if the food establishment or operation otherwise constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by section 6-5-24. When a permit is suspended, food operations shall immediately cease. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within ten (10) days of receipt by the health officer of a written request for a hearing.

(b) Whenever a permit is suspended, the holder of the permit or the person in charge shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the health officer by the holder of the permit within ten (10) days. If no written request for hearing is filed within ten (10) days, the suspension is sustained. The health officer may end the suspension at any time if reason for suspension no longer exist. (Code 1967, Section 12-12, Ord. No. 810219-D, pt. 2)

PETITIONER'S REQUEST FOR DOCUMENTS

2. Complaint allegedly made at Farmers Market in 1986 R 0158

Resp. Ans: See attached Exhibit "A" which is incorporated herein by reference (F 15 Appendix) R 0168 R 0254

3. Complaints filed against any vendor at Farmers Market in 1986, 1987

Ans: See attached Exhibit "A" ... R 0162

4. Name of party stating that sewage system of Plaintiff's commissary has surface discharge.

Ans: Mr. Bill Splawn, R.S. an inspector for the County Health Department, first determined that Plaintiff's sewage system had surface discharge. (A LIE)

8. Names of all personnel employed in the office of environmental Health in 1986, 1987 and position held.

Ans: Objected as irrelevant; named "persons who were involved in any manner in this case." 3 known conspirators not on list. See "Exhibit A". R 0163, R 0164, R 0168, R 0254

10. Copy of permit for using greywater disposal onto surface at Pct. 3 voluntary fire department and commissary at FM 1626 in Manchaca, Texas, 1986, 1987 R 0159

Ans: To the best of our knowledge, no permit exists. R 0164

11. Inspection reports (commissary) for above fire station 1986, 1987

Ans: Irrelevant, timely, etc. (on computer, public document)

12. Inspection reports on : (16 named out of compliance food vendors and establishments.) R 0159

Ans: Burdensome, irrelevant, expensive. (on computer, public documents) R 0164, R 0166

E 20

AFFIDAVIT, 6M GROCERY

Submitted as evidence in lieu of failure to respond to request for public documents upon request by counsel of Respondents. Petitioner is active witness. Request was made under 12 b. of (19) previously indexed.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

HEJL, ROBERT D.
Plaintiff

v CIVIL ACTION NO A 88 CA 536

AUSTIN, CITY OF
AUSTIN-TRAVIS COUNTY HEALTH DEPT.
TRAVIS COUNTY, TEXAS
Defendants

AFFIDAVIT

ROBERT D. HEJL, Plaintiff Pro Se in the above named and numbered Cause, after being duly sworn, would affirm the following statements:

These statements and information are made in the form of an affidavit due to the adamant refusal of Defendants in the above names cause to furnish these PUBLIC RECORDS to the affiant when requested according to law, a denial of equal rights and privileges of the United States Citizen. There may be slight difference in reported dates and times, but without corroborative documents, this affidavit us submitted as essentially correct to best of affiants knowledge and belief.

In early Spring of 1986 the septic system at the 6M grocery, FM 1626 Road in Manchaca, Texas failed due to overloading caused by the joint use of this disposal system by the grocery and an apartment upstairs, as well as the service station. The grocery had a meat market and a delicatessen which furnished coffee and prepared sandwiches, as well as a mini-bakery which baked cookies

from prepared dough.

The failure of the septic system was duly reported to the Austin-Travis County Health Department, and some serious event were initiated. This WAS a "Public health hazard."

The septic system, which had repeatedly failed due to overload, was found to be about 50' from the well which supplied the water to the store and associated facilities, including the apartment.

By EPA regulations and local ordinance, the well was too close to the septic system, and further, by EPA Rules and Ordinance, was require to be a CERTIFIED PUBLIC WATER SUPPLY. The well was in a low depression, had NO concrete base whatever, and had only a "shirttail" (burlap) seal. The water tested showed bacterial contamination.

The store owners (lessees) asked the complaining authorities (A-TC HD) for suggestions as to how to get into "compliance" and after about 4 months of wrangling and buck-passing, the store manager was advised that the septic system would have to be moved and greatly enlarged, utilizing the evapo-traspiration method of absorption, and since it could not possibly be moved 150' from the well (required by EPA and Local Ordinance for Certified Public Supply), it would be necessary to install a 2,000 gallon tank and use water bought from Travis County, with this water being treated with further chlorination.

The store and delicatessen continued to operate even though the septic system required continued pumping and the water was contaminated. Operators had hired an "engineer" to decide what was needed. Finally, about

September, 1986, and meat market was ordered closed by the A-TC HD. The coffee shop and delicatessen still operated.

The septic system drain field, which cannot be monitored for leakage, was placed 10' from the neighboring property, placing it about 50' from this property owner's well system. A special commode was bought which cost $400 or more to minimize discharge from the store was installed, and the apartment vacated, resulting in loss of income. The tank and chlorination system was completed about January of 1987 and the meat market was again permitted to operate.

The water sent in for testing from this new system showed "too many bacteria to count." This continued for each sample, and in the fall of 1987 affiant was asked for assistance in locating the problem by store owners. Affiant entered tank through manhole, cleaned out residue, and thoroughly disinfected tank with chlorine.

Tank was again filled, and sample taken. Again, "too many bacteria to count." Although presenting a definite public hazard under Rules, this grocery, market, and delicatessen, with mini-bakery, continued to operate until threatened with closure about June of 1988. The store owners, at a loss to obtain suitable water through this ill designed system advocated by A-TC HD, sold out to others at a financial loss of bout $32,000. (you can't take the septic and water system with you.)

The present owners, Pakistanis (a minority) enlisted the help of affiant to solve the problem. The tank was again thoroughly decontaminated by heavy dosing with

chlorination, and a holding tank was installed to give more time to facilitate mixing of chlorinating solution. Sample sent in received the same analysis: too many bacteria to count. County water haulers refused to allow sampling of truck water, Tank was again purged and re-filled. Sample showed "too many bacteria to count."

Affiant requested EPA to investigate tanks and hoses of Travis County water haulers, and State was ordered to do so. Tank was again drained. The tank was again filled .....; the sample returned "no bacteria."

Although this facility was in "non-compliance" for almost two years, there was no closure other than a few months for the meat market.

Plaintiff's well tests NO BACTERIA without chlorination, and the well is in compliance with State and EPA regulations, including chlorination facilities, even though not required to be a Public Water Supply.

SIGNED: (Robert D. Hejl)

Robert D. Hejl 1/187
Plaintiff Pro Se
P.O. Box 541
Manchaca, Texas
78652-0541
512 282-3320

Acknowledgement by Notary Public
(Norma Ceder)

F 20 e

WATER BACTERIOLOGY — State Department of Health
Form No. G-19 (Rev. 10-84) — Laboratories

Date and Time Rec'd — Date reported
Sample No.

6M Grocery — Travis
Name of water system — County

SEND RESULTS TO
6M Grocery
NAME

OUTLET OR SYSTEM — R.D. HEJL — 1-3-87 — 15:10 — √
POINT of COLL. — COLL.'D BY — M-D-Y — TIME — AM PM

TYPE OF SYSTEM	SAMPLE IS	WATER SOURCE
X PUBLIC	X DISTRIBUTION	COUNTY WATER

CHLORINE RESIDUE 2.5

UNSUITABLE FOR ANALYSIS - PLEASE RESUBMIT

X HEAVY BACTERIAL GROWTH PRESENT
POSSIBLY OBSCURING AND COMPROMISING TEST RESULTS.

Ch. 81

§81.003. Clerk

(a) The county clerk is the clerk of the commissioners court. The clerk shall:

1. Serve the court during each of its terms;
2. keep the court's books, papers, records, and effects; and
3. issue the notices, writs, and process necessary for the proper execution of the court's powers and duties.

(b)The court shall require the clerk to record in suitable books the proceedings of each term of the court. After each term the county judge or the presiding member of the court shall read and sign and the clerk shall attest this record.

(c) The clerk shall record the court's authorized proceedings between terms. On the first day of the first term after these proceedings, the county judge or the presiding member of the court shall read and sign this record.

APPENDIX G 1

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

HEJL, ROBERT D.

Plaintiff

v. CIVIL ACTION NO. A 88 CA 536

AUSTIN, CITY OF

AUSTIN-TRAVIS COUNTY HEALTH DEPARTMENT

TRAVIS COUNTY, TEXAS

PLAINTIFF'S THIRD AMENDED COMPLAINT

1. This cause of action arises under the Constitution of the United States of America and Laws of Congress and includes Amendments to the Constitution. U.S. Civil Statutes under which this complaint is based are from U.S. Const. Article 1, Section 8 Clause 3; USCA Const. Amendment 1 ; USCA Const. Amend. V ; USCA Const. Amendment VII ; USCA Const. Amendment XIV ; 42 USCS § 1983 ; 42 USCS § 1985 (2), (3) ; 42 USCS § 1988 ; 42 USCS 2000a (a) (b) (c) (d); 42 USCS § 2000 a-1 ; 42 USCS § 2000 a-2 (a) (b) (c).

2. PARTIES

a. HEJL ROBERT D. (PLAINTIFF)
P.O. Box 541
Manchaca, Texas
78652-0541

b. AUSTIN, CITY OF (DEFENDANT)
P.O. Box 1088
Austin, Texas 78767-8828

AUSTIN-TRAVIS COUNTY HEALTH DEPARTMENT
15 Waller Street (DEFENDANT)
Austin, Texas 78702

TRAVIS COUNTY, TEXAS (DEFENDANT)
P.O. Box 1748
Austin, Texas 78767

3. CAUSE OF ACTION

In 1986 Plaintiff was selling his food products publicly and at public accommodations engaged in interstate commerce as defined in 42 USCS § 2000a (a) (b) (c).

This event, the Farmers Market At Highland Mall, operated under contract with Travis County, Texas (Agency of State) using public monies, and was governed by RULES allegedly made by Texas Department of Agriculture (TDA) (State) in conjunction with Texas Agricultural Extension Service (TAES) (State) and this event was sponsored by TDA (State) and TAES (State), who had jurisdictive, suggestive, and ultimate control, with this event being allegedly under color of law.

Defendants Austin-Travis County Health Department, Travis County, Texas (Agency of State) and City of Austin, Texas allegedly had jurisdictional authority for public health, welfare, and safety at this event as well as having this jurisdiction of same i the City of Austin and County of Travis, deriving this authority from State Laws and Statutes, Rules , and ordinances, and the enforcement thereof deriving under

color of law.

The nexus which existed between Defendants was "incredible" partly because of the location of governments State, Agency of State, and City of Austin all at Austin, Texas and partly because of contracts and political affiliation, giving a close symbionic relationship between all, as well as others, and by State Law, Statute, Rules, and ordinances derived from State, clothing all parties with the authority of State Law, placing them under color of law in all acts in the scope of their employment or in relation thereto.

The RULES for the Farmers Market and the By-Laws for the "Association" were allegedly made by TDA (State). Plaintiff alleged that these RULES were unconstitutional and discriminatory and brought this to the attention of authorities who found his objection to be of merit.

"These RULES were not reasonably related to a valid government interest and violated Due Process and Equal Protection."

This, and the reporting of Plaintiff's forced segregation by these same RULES at a later date to the State Attorney General, bringing on an investigation, brought abut the desire of named Defendants and other to conspire to harm, punish, intimidate and injure Plaintiff, and remove him from the Market for his presentment to authorities, and initiated a second conspiracy where Plaintiff was singled out for Selective Enforcement.

It is evident that Plaintiff was the ONLY vendor at the Market who received full-scale prosecution and Selective Enforcement. The expressed intention of agents of

Defendants was to "Burn the ass" of Plaintiff.

The desire for retaliation by agents of Defendants was further enhanced when Plaintiff presented evidence to the Travis County Commissioners Court that Defendants were discriminating in enforcement, negligent in enforcing, and were making an unlawful demand for Certified Public Water Supply upon Plaintiff. Plaintiff alleges that this demand for Certified Public Water supply was unlawful and violated Plaintiff's Constitutional rights to equal protection and immunities because it was a demand based on intentional and purposeful discrimination, not based on any existing hazard to public health and safety, it was arbitrary and capricious, singling out Plaintiff with an intent to harass and intimidate Plaintiff in a growing conspiracy, and was not required by State Law or EPA Ruling.

It was a substantive violation of Plaintiff's right to Equal Protection. When Plaintiff had a Commissioner's Court Hearing on appeal for "waiver of fee" for his "Innovative Disposal System" (Greywater), settled Rules, facts, and evidence were disregarded in an arbitrary and capricious manner.

Plaintiff's appeal for waiver of fee was denied because agent of Defendant stated "That it would set a dangerous precedent." This is hardly a scientific conclusion based on health and safety, and not precedent setting, as such has been waived in other instances. Travis County Pct. 3 commissary in Manchaca, Texas, a public cafeteria, was at this time using surface discharge of greywater to water the grass.

At this appeal, Plaintiff conclusively proved to the Commissioners that the demand for a Certified Public Water Supply was unlawful, greatly angering agents of Defendants, who continued their demand, even though unlawful. They were furnished State Rules by the Plaintiff, who had backing of State agents.

On July 10, 1986 Plaintiff received a certified letter from agent and official of Austin-Travis County Health Department Mr. Fred Rodgers which upon receipt denied Plaintiff's right to engage in commerce at the Farmers Market, in the City of Austin and County of Travis, and this State and Nation.

This letter was Plaintiff's first official notice, and enacted immediate "Closure" and denial of right to engage in commerce. Plaintiff was singled out and the closure was not rationally related to health, safety, welfare, or the environment. It is alleged to be a discriminatory, retaliatory, invidious class-based animus, done with intent to intimidate, harm, injure, and punish Plaintiff.

Plaintiff's commissary was in full compliance with State Law. NO HAZARD EXISTED

The act of "closure" could not be rationally related to effecting public health, safety, or welfare, or environmental protection. It was intentional and purposeful discrimination, random and arbitrary, done with the tacit approval of two or more conspirators among agents of Defendants in a conspiracy intended to harm, intimidate, injure, and punish Plaintiff for presentment, and to remove him from the Farmers Market.

The letter from Mr. Rodgers stated "If you have any questions, please call me."

Plaintiff called, and was angrily told "You are going to have to sue if you want to regain your right to sell."

Plaintiff asked Mr. Rodgers what would happen if he were to go ahead and sell, and Mr. Rodgers angry reply was "If we catch you selling you will be fined up to $10,000 per day."

Plaintiff then called the office of his County Commissioner Pct. 3, and was again told that he would have to sue to regain his right to sell.

Under "accepted" procedures, (even if an imminent hazard does actually exist), there is opportunity for hearing.

HEARING WAS DENIED THE PLAINTIFF BY IMMEDIATE DEMAND FOR SUIT.

RULES ON FOOD SERVICE SANITATION are alleged to be vague and ambiguous, particularly in exactly what is considered "hazardous to public health, welfare, safety, and the environment, and are particularly deficient in providing any constitutional protection to individuals by safeguards and procedure to prevent unlawful closure or Selective Enforcement which involves the regulation of commerce and violates due process and equal protection and immunities, this being a procedural defect.

Plaintiff's commissary did not have any of the "Imminent Hazards" listed. While the "acceptable practice" (Procedural) of notice and hearing are usually followed, the conduct in Plaintiff's cause of action was also substantive, because the actions of agents of Defendants was inherently

impermissible, regardless of any protective or remedial procedures.

There was no official notice prior to cut-off, and Defendant IMMEDIATELY demanded suit, denying any hearing, and this adamant demand continued, even when the matter of alleged unlawful closure was continually brought to officials of Defendants in an appeal for redress of this alleged unlawful closure and denial of right to engage in commerce. This denial now allegedly implicates these parties within the conspiracy to deprive Plaintiff of his right to engage in commerce, as they had the potential to intervene in the conspiracy and restore Plaintiff's rights, but did not when called upon to do so, and refuse to do so until compelled by this Court to comply.

Plaintiff further alleges that named Defendants violated his rights to equal protection under the laws and equal rights and privileges derived from Constitutional Amendment V and XIV, as well as Constitution Article 1, Section 8, clause 3, and Constitutional Amendment I as well as Plaintiff's rights under Public Accommodations Title 42 § 2000a et seq.

Plaintiff alleges that the conspiracy, discrimination, denial of equal protection and equal privileges and immunities not only affected Plaintiff outside of his sales at the Farmers Market, but did so particularly at this covered establishment of public accommodations. The conspiracy is alleged to have resulted from a classed-based invidious discrimination animus which singled out the Plaintiff and began with the alleged unlawful, unconstitutional, and discriminating animus created by the "classification" of

persons, this "classification" being done arbitrarily and capriciously without regard for Constitutional or Civil Rights, Laws, or Statutes, or Race, Color, Religion, or national origin, but being done only with the intent to "organize for a financial consideration as membership. These RULES are alleged to be made by State, and were carried out by State, Agency of State, and Private party.

"It was a classification which served no rational purpose and divided citizens into different classes and treated them differently, violating the Equal Protection clause." "When government compels membership in an organization or in some manner lends its authority to such compulsion, there are constitutional limitations."

The RULES were not reasonably related to a valid government interest, and violated Due Process and Equal Protection, and even in their most innocent interpretation, did not permit the extent of authority forcibly impressed upon Plaintiff, in particular, Selective Enforcement, while giving "members" immunity from prosecution of the same Rules used to deny Plaintiff his right to engage in commerce.

Plaintiff is an "Old" Moravian Taborite. The National Origin of Taborites is from Moravia, now a province or state of Czechoslovakia. The history of Taborites is one of exceptional persecution, almost to their extinction in the thirteenth century, by the Teutons and the Roman Catholic Church, which viciously fought their advocacy of Protestantism prior to Martin Luther. "Old" Moravian Taborites advocate the "Brotherhood of Man", and among their creed and belief is the right to enjoy their trade and

commerce without any classification or necessity of joining trade, guild, or union association.

Plaintiff was expressing his religious belief and creed when he refused to join an "Association" to which he had neither need or desire to join. This right of expression is protected by the Constitutional Amendment I freedom of religion clause. It would be no problem showing that "Old" Moravian Taborites are a vanishing species, with their evolution into Unitas Fratum, United Brethren, Moravian Brethren, and the Anglicized Quakers. It is doubtful if any Calixtines or Hussites remain today, and "Old Moravian doctrine of absolute honesty and integrity among men dooms most to other means of religious expression.

By "classification", Plaintiff became a "non-member". Persons who became a "member" by paying a $20 initiation fee were given immunity from prosecution by the same laws used to "shut down" Plaintiff, obviously by instructions from agents of State or Agency of State. The Rules for the Farmers Market specifically stated the requirement that product to be sold must "meet State and/or County Health Regulations." However, of the dozen or so who sold manufactured or packaged food products, only about three (including Plaintiff) were in total compliance.

Had the local health department given ALL the vendors the same criteria demanded of Plaintiff, there would have been NO food vendors. This was solved by eliminating Plaintiff from the Market, and then overlooking the deficiencies in compliance of "members", who continued to sell although out of compliance ranging from no commissary

or State Food Mfgrs. License as well as misbranding products (total non-compliance) to variations of each, with only about three of the vendors (including Plaintiff) in possession of a valid State Food Mfgrs. License, required by law.

Obviously, Plaintiff was singled out for Selective Enforcement at a place of public accommodations, a gross restraint of commerce violating Plaintiff's right to equal protection and privileges and immunities derived from Constitutional Amendment XIV and Constitution Article I section 8 clause 3 and Plaintiff's right to free expression of his religious belief and creed were abridged by discrimination due to his religion and national origin, this being done in an invidious, class-based discrimination animus involving conspirators to two or more agents of Defendants and agents of State or Agency of State, doing so intentionally, with malice and intent to harm, intimidate, and injure Plaintiff, gross and intentional, purposeful discrimination for Plaintiff's having presented evidence to authorities concerning Defendants unlawful demands, failure to prosecute, discrimination, and Selective Enforcement.

Plaintiff alleges that it is just as much his protected Constitutional right to EXPRESS his religious belief and creed by NOT joining anything as is the Constitutionally protected right of a Hebrew to wear a Yamulka in public, a Catholic to "cross himself" anywhere, or for an Italian to be referred to as Italian, and not a "Wop". So intent was the desire of the conspirators to punish the Plaintiff, that even race or color would not have been a deterrent.

The "immunity" from enforcement of Austin Code 6-5-2 and State Law requirement of State food mfgrs. license was again extended to "members" of the Association who sold at the Farmers Market in 1987, while Plaintiff, still a "non-member", was denied his right to engage in commerce due to the requirement of suit to regain his right to sell.

Texas is a right-to-work State, and this class of workers is protected by law and statute. Plaintiff is obviously within the right-to-work class.

Food vendors throughout the Austin and Travis County area have continually sold food products from mobile vehicles while out of compliance with State Law and Austin Code Section 6-5-2, and this out-of-compliance permissiveness is commonplace among various fund raising groups, organizations, etc., although there are NO exceptions under State law.

The City of Austin and County of Travis daily violate within their own buildings (and operations) State Rules For Food Service Sanitation and State Food Mfgrs. licensing; each daily violate Rules of Travis County, Texas For Private Sewage Facilities in the most gross manner, while exercising closure of Plaintiff for properly disposing 30 to 40 gallons of chlorinated soapsuds weekly by means of subsurface absorption in a disposal system that has been inspected and accepted as sufficient by State Food & Drug agent.

The preceding, lengthy explanation of Plaintiff's cause is made for the benefit of Defendants and the Court.

In specificity, Plaintiff would allege that Agents of named Defendants City of Austin, Austin-Travis County

Health Department, and County of Travis did with gross negligence, deliberately, maliciously, and intentionally, with intent to harm, injure, intimidate, and punish Plaintiff, did enter into a conspiracy consisting of two or more conspirators with the intent to deprive Plaintiff of his Civil and Constitutional Rights, discriminating and singling out Plaintiff in a class-based conspiracy where the classification served no rational purpose and divided citizens into different classes and treated them differently, this alleged unlawful and unconstitutional classification being derived from RULES made by State, did on or about the first week of June 1986 conspire among themselves and within the officials and agents of the Austin-Travis County Health Department to commit Selective Enforcement upon Plaintiff because Plaintiff's presentment to authorities concerning their discriminatory enforcement, failure to enforce, and negligence in enforcement. The conspirators desire for retaliation against Plaintiff was further enhanced when in a hearing for waiver of fee for "Innovative Disposal System", Plaintiff conclusively proved to Commissioners that their adamant demand that Plaintiff have a Certified Public Water Supply was not lawful, and that Plaintiff was backed by agents of State. Through informants, Plaintiff was warned of a conspiracy to deprive Plaintiff of his Civil Rights, and at this hearing, Defendants were specifically warned by Plaintiff that "You had better follow due process in whatever you do." Plaintiff was not aware that the televised hearing was publicly broadcast. This greatly angered agents of Defendants who continued their demand for CPWS, and in a random and

arbitrary act not rationally related to affecting health, safety, welfare, or the environment, in an invidious discriminatory animus specifically singling out a "non-member" vendor at the Farmers Market while granting immunity from prosecution to "members", in an act retaliatory and punitive, done with the tacit approval of two or more conspirators, did on July 10, 1986 deprive Plaintiff of his right to engage in commerce at the Farmers Market, in the City of Austin and County of Travis, and in the State of Texas and the United States of America under threat of $10,000 per day fine if found selling; in so doing, the Defendants did deny Plaintiff's right to Due Process, Equal Protection, and Equal Privileges and Immunities by use of Rules made under color of law, and exercising these Rules by authority made possible only because they were clothed with authority by color of law.

Further, in gross discrimination, singling out Plaintiff in a random and arbitrary act not rationally related to health, safety, welfare, or the environment, the conspirators, did deny the substantive rights of Plaintiff, denying a hearing by the immediate and adamant demand for suit by Plaintiff to recover his right to engage in commerce, denying Plaintiff's right to Due Process, Equal Protection, and Equal Privileges and Immunities derived from Const. Amend. XIV, V, and being rights and privileges due to a citizen of the United States.

This act of Selective Enforcement not only deprived Plaintiff of Rights, Privileges and Immunities, it deprived Plaintiff of 85% of his income derived from his trade and profession and caused grievous financial losses resulting from the denial of Plaintiff's right to sell his products, as well

as the loss of his products and raw materials due to deterioration of quality.

Plaintiff alleges his commissary was in full compliance with State Law at time of Selective Enforcement and that Selective Enforcement was unlawful as NO hazard existed to public health, welfare, safety, or the environment. When this act of Selective Enforcement was brought to the attention of officials of agents of Defendants, these officials failed to prevent, void, or correct said act(s) although possessing full knowledge that the alleged acts were done without Due Process and that Defendants demand for CPWS was unlawful.

Selective Enforcement, grossly enacted by singling out Plaintiff while granting immunity to "members" at the Farmers Market, a covered establishment engaged in interstate commerce under Rules made under color of law, was discrimination and denial of equal privileges and immunities resulting from Plaintiff's exercise of his religious belief to be free to classification and nations origin as an "Old" Moravian Taborite, and this discrimination was supported by State action in violation of prohibition against discrimination required by law, statute, ordinance, regulation, rule, or order of State agency, and the acts were done violating prohibition of, interfacing with, and punishment for exercising rights and privileges secured by section 2000a or 2000a-1 of 42 USCS § 2000a.

Plaintiff is aware of an active conspiracy at this time to deprive him of his right to trial by jury. Plaintiff has notified the United States Attorney General and Director of the Federal

Bureau of Investigation.

Plaintiff requests trial by jury.

4. WHEREFORE, Plaintiff would pray for relief by compensation in the amount of $250,00 (TWO HUNDRED FIFTY THOUSAND DOLLARS) sum certain, to increase at the accrual of $2,000 (TWO THOUSAND DOLLARS) per week beginning August 18, 1988 with this accrual continuing and increasing at the rate of $500 (FIVE HUNDRED DOLLARS) additional each six months due to increasing net loss of sales and income due to delay and failure of Defendants to restore Plaintiff's right to engage in commerce, and SUM Certain and accrual pertaining to net loss of business or sales due to unlawful closure, loss of advertising and public relations, grievous mental anguish and gross depression, loss of credit and future financial benefits, exemplary losses due to curtailment of Plaintiff's income by Selective Enforcement, and any other financial relief to which Plaintiff may be entitled including reasonable attorneys fees and compensation for Plaintiff's Pro se proceedings in this cause.

In additions, Plaintiff prays that the SUM of $10,000,000 (TEN MILLION DOLLARS) in punitive damages be assessed Defendants for gross negligence and conspiracy to deprive Plaintiff of his Civil Constitutional Rights by enacting Selective Enforcement when no hazard existed, and denying a hearing in substantive Due Process where Plaintiff might have his day in court to present his evidence concerning Selective Enforcement, and for the failure of officials of Defendants to correct an unlawful closure when

called upon to do so.

Plaintiff would further pray that this Court, after duly considering the evidence and testimony of witnesses, declare RULES OF TRAVIS COUNTY, TEXAS FOR PRIVATE SEWAGE FACILITIES and RULES ON FOOD SERVICE SANITATION as enforced by City of Austin, Texas, Travis County, Texas, and Austin-Travis County Health Department to be unconstitutional by reason of Selective Enforcement, discriminatory enforcement, failure to enforce and follow these same Rules within their own operations, and failure of these Rules to provide adequate appeal protection.

Plaintiff prays that this Court restore his right to engage in commerce.

SIGNED this (13th) day of February, 1989

_____(Robert D. Hejl)____ 1/187

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CERTIFICATE OF SERVICE

By my signature hereon I hereby certify that I have sent a true and correct copy of Plaintiff's Third amended complaint to the following by U.S. Mail certified, return receipt requested.

Orlinda L. Naranjo
Assistant City Attorney
P.O. Box 1088
Austin, Texas 78767-8828

Jim McCormack
Asst. C. City.
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AUTHORITIES

Martin v. Harrah Independent School District 579 F.2d 1192, 1198 (10th Cir. 1978)

1. Const. Law key 255 (1), 277 (1)
   Fourteenth Amendment affords not only a procedural guarantee against deprivation of life, liberty, and property, but also protects substantive aspects of such interests against unconstitutional restrictions by States, USCA Const. Amend. 14
2. Const. Law key 213.1 (2) 251.3
   Essence or touchstone of due process generally and equal protection specifically is protection of individuals from arbitrary or unfair impact of government action. USCA Const. Amend. 5,14
3. Const. Law key 208 (1)
   In each case asserting unconstitutional restrictions by states, reviewing Court must consider constitutional importance of affected individuals interests, character of states action or classification in question and states asserted interest in support of its action or classification. USCA Const. Amend. 5,14

"A regulation not reasonably related to a valid government interest may not stand in the face of a due process attack." " A classification which serves no rational purpose or which arbitrarily divides citizens into different classes and treats them differently violates the equal protection clause." "The fourteenth Amendment affords not only a procedural guarantee against the deprivations of life, liberty, and property, but also protects substantive aspects of their

interests against unconstitutional restrictions by the States."
Kelly v. Johnson 435 US 238, 244, 96 Sct. 1440, 47 LEd 2d 708 1976

"Even if the requisite procedural due process notice and hearing requirements were strictly adhered to, the Fourteenth Amendment affords not only a procedural guarantee against life, liberty, and property, but likewise protects substantive aspects of these interests." The adequate notice and fair hearing required by procedural due process would have little meaning, if, upon conclusion of the hearing, the government were free to ignore settled rules and understandings, disregard facts, and otherwise act in an arbitrary or capricious manner."

Dickerson v. United States Steel Co. 1977 DC Pa 439 F Supp 55

"If party has potential to stop illegal activity but fails to do so, then that party may be said to have impliedly conspired to such illegalities."

Preface

APPENDIX H

Statement of facts leading to suspension of Petitioner Petitioner (hereinafter Hejl), a Travis County, Texas (Agency of State) farmer/rancher sold produce and jelly at Travis County Farmers Market (Market) at Highland Mall (Mall) (Private Actor with authority of State by contract) in 1984 and 1985 by invitation from Texas Agriculture Extension Service (Agency of State - TAES) and Mall without problems. Market originated by Texas Dept. of Agriculture (TDA), program of TAES and Travis County, administered and supervised by each, funding from tax monies and Federal Aids, all promulgation of Rules and enforcement of Rules under color of State law.

In 1986 TDA Commissioner advocated "organizing" as a political voice and promulgated By-Laws[1] under color of State Law for "Central Texas Growers Association" (CTGA) (NOT a co-op) and made Rules[2] for the Market under color of State Law which were included in Contract[3] made under authority of State Law by Travis County Commissioners and Mall (Private Actor). Address and telephone of CTGA same as TAES[1].

These Rules of the Market[2] were discriminatory, arbitrarily classifying citizens into different classes - "Member" and "Non-member" for only a financial consideration, dividing

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[1] CTGA By-Laws; App. F-1: [2] RULES for Mkt. at Mall; App. F-2: [3] CONTRACT App. F-3

them and treating them differently in a publicly-financed place of public accommodations in a manner without rational purpose or government interest.

Noting unconstitutionality of these Rules[2], Hejl reported and contested imposition of these Rules[2] at the Market. Investigations showed that Rules[2] did not meet constitutionality test of State Laws because the Rules[2] were arbitrary, unenforceable under State discrimination standards, "classification" was arbitrary and not related to State objectives or interest, Rules[2] had no reliable confirmation regarding classification of vendor status, gave preferential advantage[2] to CTGA "members" over local in-county growers if "non-member", and had no real qualification for membership other than $20 initiation fee. Market at Mall 1986, fulfills description of a place of public accommodations as described in 42 USCS§ 2000a a,b,c,d, as well as 42 USCS § 2000a-1 and a-2.

Discrimination of Hejl resulted from Hejl's refusal to join CTGA by reason of expressing Hejl's religious belief and creed of "Old" Moravian Taborite which considers union, craft, or guild membership unnecessary evil to mankind in self-employment. Hejl is protected by State Statutes[4] "Right-to-

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[2]RULES for Mkt. at Mall: App. F-2: App. F-6: [4]St. Right to work; App. F-4

work". When financial coercion by Mall failed, Hejl was segregated by TAES and Mall. Hejl notified State Attorney General, who ordered immediate desist to discrimination and segregation of Hejl. Hejl furnished authorities with information on Market, CTGA, and Agriculture Commissioner. State Statutes require licensing[5] of all manufacturers (mfr.) of food products and mfr. of food products in commissary which meets State Food & Drug Rules[6]. These Rules[6] are adopted in local Ordinance[7]. There are NO exceptions or waiver. Additional Rules for Market[8] made by TDA and TAES mandated same Rules [5,6,7]. Hejl displayed State license[5,9] and had new commissary which graded 83 on inspection[10], (60 passing). Agent of Respondent Austin-Travis County Health Department (Resp. A-TCHD) made demands upon Hejl not required by State[11] or EPA[11] and not demanded of others. Hejl contested these demands in letters to Travis County Commissioner[12], angering officials of Resp. A-TCHD. Previous letter to Mall [13] at request for "suggestions" upset State Ag. Commission and officials of Resp. A-TCHD.

At PUBLICLY televised hearing, set by Travis Co. Commissioners, Hejl proved that demand for Certified Public

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[5] Food Lic. Req.;App. F-5: [6] Tx. F.D.&C. Act: Rules: App. F-6: [7]COA Ord. 6-5-2; Charter; App. F-7: [8]MKT. Health Rules; App.F-8: [9]Hejl License; App. F-9: [10]Insp. Report; App. F-10: [11]CPWS RULES; App. F-11:[12]Ltr. Comms.; App. F-12: [13] Mall Sug.; App. F-13:

Water Supply (CPWS)[11] was unlawful. Greywater use was within their Rules[14] and pending. Informed that retaliation was imminent, Hejl also warned agents "You had better follow due process in whatever you do."

Hejl was the ONLY food vendor displaying State license[9] at Market (requirement of Market Rules)[8] and probably only vendor with commissary meeting State Rules on Food Service Establishments[6] in 1986. Of 11 vendors of mfr. food products, one claimed to have license, others had none. Seven admitted NO commissary, further violation of State Rules[6]. (Class A Misdemeanor). All 11 were CTGA "members". Hejl, a "non-member" by classification made by State TDA Rules[2] received the ONLY complaint[15] filed at the 1986 Market. (Unknown: obtained by discovery) It is an ALTERED PUBLIC DOCUMENT)[16] CTGA "members" received UNLAWFUL exemption from prosecution or compliance of mandatory State Statutes[5], Rules[6], Resp. COA Ordinance[7], and Market Rules[8] by agents/officials of Resp. A-TCHD.

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[11]CPWS RULES; App.F-11: [14] Inn. Disp. Sys.; App. F-14: [9] Hejl license; App. F-9: [8] MKT Health Rules; App. F-8: [6] Tx. F.D.&C. Act; Rules; App. F-6: [2] RULES for MKT. at Mall; App. F-2: [15]Resp. Exh. "A"; App. F-15: [16] Disc. Pub. Doc.; App. F-16: [5] Food Lic. Req.; App. F-5: [7]COA Ord. 6-5-2; Charter; App. F-7